

United States
Circuit Court of Appeals

For the Ninth Circuit.

GLENN R. BOTHWELL, as Trustee in Bankruptcy
of AMERICAN FALLS CANAL & POWER
COMPANY, Bankrupt,

Appellant and Petitioner,

vs.

T. E. FITZGERALD and W. A. WEST,
Appellees and Respondents.

In the Matter of AMERICAN FALLS CANAL &
POWER COMPANY, a Corporation, Bankrupt.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Idaho and upon Petition
for Revision Under Section 24b of
the Bankruptcy Act of
July 1, 1898.

Filed

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E. D. Monckton,
Clerk.

No. 2431

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys.]

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*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY.

In the Matter of The AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

**Petition [of Trustee in Bankruptcy for Order to
Show Cause, etc.].**

The petition of Glenn R. Bothwell, as trustee in
bankruptcy of the American Falls Canal & Power
Company, respectfully shows to the Court:

I.

That on the 24th day of February, 1914, the
American Falls Canal & Power Company, a cor-
poration organized under and pursuant to the laws
of the State of Utah, filed its voluntary petition in
bankruptcy in the District Court of the United
States for the District of Utah, wherein it prayed to
be adjudged a bankrupt under the laws of the
United States. That thereafter on the 27th day of

February, 1914, the United States District Court for the District of Utah made and entered its order in said matter adjudicating the said American Falls Canal & Power Company a bankrupt within the purview of said laws of the United States, and referred the estate of said bankrupt to Charles Baldwin, referee in bankruptcy of said court, for administration. That a copy of said order of adjudication and reference is hereto attached marked Exhibit "A" and made a part of this petition.

II.

That after the reference of said matter to the said referee, said referee caused notice to creditors to be published pursuant to law and the orders of the Court, and on the 16th [1*] day of March, 1914, a meeting of the creditors of said bankrupt was held before the said Charles Baldwin, referee in bankruptcy, at Salt Lake City, Utah, and at said meeting claims were proved and allowed by said referee, and the creditors of said bankrupt by their votes elected Glenn R. Bothwell, your petitioner, trustee in said bankruptcy matter, and upon such election the said referee duly made and entered an order appointing the said Glenn R. Bothwell trustee in said matter and fixed his bond at the sum of One Hundred Thousand (\$100,000.00) Dollars. That thereafter on said date the said Glenn R. Bothwell executed and delivered said bond and did all things that was necessary to qualify him as such trustee, and he is now the duly elected, appointed, qualified and acting trustee in the matter of the bankruptcy

*Page number appearing at foot of page of original certified Record.

of the said American Falls Canal & Power Company.

III.

Your petitioner further represents that said bankrupt estate consists of real and personal property located within the States of Utah and Idaho, and is specifically described and scheduled in said original bankruptcy proceedings.

IV.

That on the 2d day of April, 1914, one T. E. Fitzgerald and one W. A. West, as parties plaintiffs, acting by and through Spencer L. Baird and Ben W. Davis, engaged in the practice of law under the firm name of Baird & Davis, at American Falls, Idaho, and W. E. Sullivan and L. L. Sullivan, engaged in the practice of law at Boise, Idaho, under the firm name of Sullivan & Sullivan, instituted a suit in the District Court of the Fifth Judicial District in and for Power County, State of Idaho, against the said bankrupt, the American Falls Canal & Power Company, and on said date caused summons to be issued and served upon said bankrupt, and upon the same date applied to the Court for and the Court issued an order requiring said bankrupt to appear [2] before Honorable Alfred Budge, at American Falls, Idaho, on the 11th day of April, 1914, and show cause, if any it has, why an order should not be made and entered by said Court appointing a receiver of said defendant company, with power to complete a certain lateral to said American Falls Canal, and to collect sufficient moneys due and owing said bankrupt, or to become due and owing from the holders

of water deeds of said bankrupt, and to expend the same in the completion of said canal and said lateral. That a copy of said complaint, summons and order to show cause is hereto attached, marked Exhibit "B," and made a part of this petition.

V.

Your petitioner further represents that by said proceeding the said T. E. Fitzgerald and W. A. West are attempting to secure preferences and advantages over other creditors of said corporation and to compel the application and use of the assets of said estate for their own special benefit and advantage, and greatly to the annoyance of your petitioner and to the damage of other creditors, contrary to the provisions of the said bankruptcy law, and that it would be advisable and to the advantage of said estate that some suitable person be appointed ancillary trustee by this Court to act for and in connection with your petitioner in the administration of said estate.

WHEREFORE, your petitioner prays:

1. For an order requiring the said T. E. Fitzgerald and W. A. West, and Spencer L. Baird, and Ben W. Davis, and W. E. Sullivan and L. L. Sullivan, as attorneys for the said T. E. Fitzgerald and W. A. West, plaintiffs in said proceeding, to appear before this Court at a time certain to be designated by the Court, and show cause, if any they have, why they should not be permanently enjoined from instituting any proceeding in [3] any state court of said State of Idaho against your petitioner or the said American Falls Canal & Power Company, bankrupt, and from directly or indirectly interfering

with the possession or disposition of the assets of said bankrupt, and in the meantime and until said order can be heard, your petitioner prays for an order enjoining and restraining the said T. E. Fitzgerald and W. A. West, and each and all of their said attorneys, from appearing before the said Honorable Alfred Budge on the said 11th day of April, 1914, or at any other time or before any other Judge or court in the said State of Idaho, excepting only this court, and applying for or prosecuting said order or any other order to show cause, and from making said application or any other application for the appointment of a receiver of said bankrupt corporation, or from interfering with the possession, use or disposition of any of the assets of said bankrupt corporation.

2. Your petitioner prays that upon final hearing of said order the Court designate and appoint some proper and suitable person as ancillary trustee in the matter of the bankruptcy of said American Falls Canal & Power Company, with full power and authority to act under and in connection with your petitioner in the collection and distribution of the assets of said bankrupt corporation and the administration of said estate, pursuant to law and the orders of the District Court of the United States for the District of Utah, and of this court.

3. Your petitioner prays for general relief, including costs herein.

J. D. SHEEN,

L. R. MARTINEAU,

J. H. EVANS,

Solicitors for Petitioner, Salt Lake City, Utah. [4]

State of Utah,
County of Salt Lake,—ss.

Glenn R. Bothwell, being first duly sworn, deposes and says, that he is the person named as petitioner in the foregoing petition; that he has read said petition, knows the contents thereof and that the same is true.

GLENN R. BOTHWELL.

Subscribed and sworn to before me, this 10th day of April, 1914.

[Notarial Seal]

WM. J. COWAN,
Notary Public. [5]

**Exhibit "A" [to Petition of Trustee in Bankruptcy
for Order to Show Cause, etc.].**

EXHIBIT "A."

*In the District Court of the United States for the
District of Utah.*

No. 1763—IN BANKRUPTCY.

In the Matter of AMERICAN FALLS CANAL
AND POWER COMPANY,
Bankrupt.

Adjudication of Bankruptcy.

At Salt Lake City, in said District, on the 27th day of February, A. D. 1914, before the Honorable John A. Marshall, Judge of the said Court, in Bankruptcy, the petition of American Falls Canal and Power Company, that it be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard

and duly considered, the said American Falls Canal and Power Company is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable JOHN A. MARSHALL, Judge of said Court, and the seal thereof, at Salt Lake City, in said District, on the 27th day of February, A. D. 1914.

[Seal] JERROLD R. LETCHER,
Clerk.

Enter:

J. A. MARSHALL,
Judge.

Filed February 27, 1914. Jerrold R. Letcher,
Clerk. [6]

*In the District Court of the United States for the
District of Utah.*

No. 1763—IN BANKRUPTCY.

In the Matter of AMERICAN FALLS CANAL
AND POWER COMPANY,
Bankrupt.

Order of Reference.

WHEREAS, American Falls Canal and Power Company of Salt Lake City, in the County of Salt Lake and District aforesaid, on the 27th day of February, A. D. 1914, was duly adjudged a bankrupt upon a petition filed in this court by it on the 24th day of February, A. D. 1914, according to the provisions of the acts of Congress relating to bankruptcy:

It is thereupon ordered, that said matter be referred to Charles Baldwin, one of the referees in

bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said American Falls Canal and Power Company shall attend before said referee at 10 o'clock A. M. on the 2d day of March, 1914, at his office in Salt Lake City, Utah, and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said voluntary bankruptcy.

Witness the Honorable JOHN A. MARSHALL, Judge of said Court, and the seal thereof, at Salt Lake City, in said District, on the 27th day of February, A. D. 1914.

[Seal]

JERROLD R. LETCHER,

Clerk.

Enter:

J. A. MARSHALL,

Judge.

Filed February 27, 1914. Jerrold R. Letcher, Clerk. [7]

United States of America,
District of Utah,—ss.

I, Jerrold R. Letcher, Clerk of the United States District Court, in and for the District of Utah, sitting at Salt Lake City, do hereby certify the above and foregoing to be a true, perfect and complete transcript and copy of the orders of adjudication and reference made by the Court February 27, 1914, and now of record in said Court, and in a certain cause No. 1763 in bankruptcy said Court pending, In the Matter of American Falls Canal and Power Company, Voluntary Bankrupt, as fully and com-

pletely as the same still remains of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Salt Lake City, in said District, this 10th day of March, A. D. 1914.

[Seal]

JERROLD R. LETCHER,

Clerk. [8]

Exhibit "B" [to Petition of Trustee in Bankruptcy for Order to Show Cause, etc.].

EXHIBIT "B."

COPY.

In the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County.

T. E. FITZGERALD and W. A. WEST,

Plaintiffs,

vs.

AMERICAN FALLS CANAL & POWER COMPANY, a Corporation,

Defendant.

Order to Show Cause Why Receiver Should not be Appointed.

The plaintiffs in the above-entitled cause, having commenced an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, against the defendant, American Falls Canal & Power Company, and having prayed for the appointment of a *receiver and* irrigation system situate in Bingham and Power Counties, Idaho, in said complaint in said action, duly verified

on the oath of one of the attorneys for said plaintiffs, and it satisfactorily appearing to me therefrom that there are sufficient grounds for granting an order to show cause why a receiver should not be appointed as prayed for;

IT IS THEREFORE ORDERED, That said defendant, American Falls Canal & Power Company, appear before me at the courtroom of said court in American Falls, Idaho, on the 11th day of April, 1914, at 10 o'clock A. M. of said day, to show cause, if any it has, why an order should not be made and entered by this Court appointing a receiver of said defendant company with power to complete the canal and irrigation system of said defendant company, especially its lateral No. 33, situate in Bingham and Power Counties, Idaho, and that full power to collect sufficient monies due and [9] owing, or to become due and owing from the holders of water deeds from said defendant company and to expend the same so collected as shall be necessary to complete said irrigation system, and especially said lateral No. 33.

Dated this 6th day of April, 1914.

ALFRED BUDGE,
District Judge. [10]

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Power County.*

T. E. FITZGERALD and W. A. WEST,
Plaintiffs,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,
Defendant.

**Summons [in State Court in Fitzgerald et al. vs.
American Falls Co.].**

THE STATE OF IDAHO Sends Greeting to
American Falls Canal & Power Company, the
Above-named Defendant:

You are hereby notified that a complaint has been
filed against you in the District Court of the Fifth
Judicial District of the State of Idaho, in and for
the County of Power, by the above-named plaintiffs,
and you are hereby directed to appear and answer
the said complaint within twenty days of the service
of this summons if served within said Judicial Dis-
trict, and within forty days if served elsewhere; and
you are further notified that unless you so appear
and answer said complaint within the time herein
specified, the plaintiffs will take judgment against
you as prayed in said complaint.

WITNESS MY HAND AND THE SEAL of
said District Court this 6th day of April, 1914.

[Seal]

PAUL BULFINCH,
Clerk.

_____,
Deputy.

BAIRD & DAVIS,

Residence, American Falls, Idaho,

SULLIVAN & SULLIVAN,

Residence, Boise, Idaho,

Attorneys for Plaintiffs. [11]

**Complaint [in State Court in Fitzgerald et al. vs.
American Falls Co.].**

District Court, Fifth Judicial District, Power
County, State of Idaho. T. E. Fitzgerald and W. A.
West, Plaintiffs, vs. American Falls Canal & Power
Company, a Corporation, Defendant. Complaint.
Filed April 6th, 1914, at 9:10 o'clock, A. M. Paul
Bulfinch, Clerk. By _____, Deputy. Baird &
Davis, Residence: American Falls, Idaho; Sullivan
& Sullivan, Residence, Boise, Idaho, Attorneys for
Plaintiffs. [12]

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Power County.*

T. E. FITZGERALD and W. A. WEST,
Plaintiffs,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,

Defendants.

Complaint.

The plaintiffs complain of the defendant, and for cause of action herein allege:

I.

That the defendant, American Falls Canal & Power Company, is now, and during all the times hereinafter mentioned, has been a corporation organized and existing under and by virtue of the laws of the State of Utah, and doing business in the State of Idaho, with its principal place of business therein in Bingham County, Idaho.

II.

That said defendant is a public service or a *quasi*-public corporation, and was organized for the purpose of constructing and building that certain irrigation project and system known as the American Falls Canal & Power Company Project, situate in Bingham and Power (formerly a portion of Blaine and other counties) Counties, State of Idaho, by constructing or causing to be constructed, dams, ditches, conduits, flumes and other means for the purpose of diverting water from Snake River, and for the purpose of selling and transferring water rights therein for irrigation of lands lying under said system and for domestic purposes. [13]

III.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00 to be paid in ten installments, receipt of the first of which, a cash payment of \$480.00, being thereby acknowledged, the said American Falls Canal & Power Company

made, executed and delivered to plaintiff, T. E. Fitzgerald, its certain warranty deed in writing, conveying a certain water right, a copy of which is hereto attached, marked Exhibit "A," and by this reference made a part hereof; and said complainant is now the owner and holder thereof.

IV.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00 to be paid in ten installments, receipt of the first of which, a cash payment of \$480.00, being thereby acknowledged, the said American Falls Canal & Power Company made, executed and delivered to plaintiff, W. A. West, its certain warranty deed in writing, conveying a certain water right, a copy of which is hereto attached, marked Exhibit "B," and by this reference made a part hereof; and said complainant is now the owner and holder thereof.

V.

That the lands of said W. A. West, which are now owned by and in the possession of said West, described in said deed, to which the shares of water conveyed in said deed became attached and appurtenant adjoins the lands described in said deed executed and delivered to said T. E. Fitzgerald, which lands are now owned by and in the possession of said Fitzgerald, and to which the shares of water conveyed in his said deed became attached and appurtenant.

[14]

VI.

That said defendant, after its organization as aforesaid, proceeded to construct and build its said canal and irrigation system for the purpose of sup-

plying and delivering water for the irrigation of lands situate in Bingham and Blaine (a portion of which is now a portion of Power County) Counties, including the lands of plaintiffs herein; but the same is not, nor ever has been, constructed or completed so as to carry and deliver water of said system for the irrigation of the lands of said plaintiffs, or any portion thereof, as required by the deeds aforesaid; that sufficient water is not available under the present works as completed at the present time, to furnish the contract holders under said system who are to take their water from lateral No. 33, with sufficient water to properly irrigate their lands.

VII.

That notwithstanding the said deeds and the obligations assumed by, and devolving upon said defendant thereunder to carry, furnish, and deliver ample water for the proper irrigation of the lands of said plaintiffs, although there was plenty of water available at the place of diversion, and notwithstanding the fact that each of said plaintiffs had duly and fully performed all the conditions and obligations of said deeds to be by said plaintiffs performed, utterly failed, neglected and refused, and still fails, neglects and refuses to construct and complete its said system so as to furnish, carry, deliver and make available for each of said plaintiffs' use, ample water, or any water for the proper irrigation of the lands of said plaintiffs or any portion thereof, or crops and trees planted and growing thereon, in accordance with each of said deeds; said defendant has utterly failed, neglected and refused and still fails, neglects

and refuses to construct canals and laterals of a carrying capacity [15] sufficient to deliver water at the rate of one-eightieth of one second-foot per acre at its main canal, and one-fiftieth of one second-foot per acre, or any water, in the lateral from which said plaintiffs were to take water for the irrigation of their said lands, but, on the contrary, said defendant constructed its said canals and laterals and carried and delivered some water, not sufficient, however, to properly irrigate any of said lands, to a point within one-half mile of said land of said T. E. Fitzgerald, but said point was at too low an elevation to allow water to be distributed therefrom over said lands of said plaintiffs, or any part thereof, thus making all of the canal system of said defendant under and below the said lands of said plaintiffs so as to make it impossible to secure water therefrom at any point within one-half mile of said lands, for the irrigation thereof; and did utterly fail, neglect and refuse and still fails, neglects and refuses, to so locate and construct its said irrigation system in such a manner, and in such capacity that ample water for the irrigation of said lands of said plaintiffs and the crops and trees growing thereon, can or could be carried or furnished or delivered or made available for use on said lands of said plaintiffs or any part thereof, during all of said irrigation seasons, or any part thereof, in accordance with its obligations under said deeds, but, on the contrary, constructed the canals and laterals of said system, and especially the lateral leading to the lands of said plaintiffs from which they were to take water for

their said lands, in such a manner that said lateral and all points of the same within one-half mile of any of said lands is below the point where it is necessary for said plaintiff to take the water from said lateral for distribution and was upon the said lands of said plaintiffs and each part of the same, thus making all of said lateral over a course and grade that is too low to [16] permit of the distribution of water therefrom over and upon said lands or any part thereof. By reason of so constructing its said canals and laterals, said plaintiffs found, and still find, it impossible to take or distribute water therefrom over their said lands, or any part thereof, for irrigation purposes, or any purposes; that said defendant company with the full knowledge at all times of said conditions, failed and refused, and still fails and refuses to remedy the defects in the lateral locations and construction, and still fails, neglects and refuses to relocate or reconstruct or complete said laterals and said system, or remedy in any way the defective and improperly located and constructed parts of the canal and irrigation system aforesaid; whereby each of said plaintiffs has been, since the execution of their said deeds, and still is, deprived of the water supply to which he is entitled for his said land as aforesaid.

VIII.

That said defendant notified each of said plaintiffs herein prior to the construction of the lateral leading to the lands of said plaintiffs that it would construct and built a lateral to be known as No. 33, from which it would expect each of said plaintiffs

and other water-right holders having lands lying under the same to take water therefrom for the irrigation of their lands; which said lateral No. 33 is the one constructed as set forth in Paragraph VII herein; that said defendant informed and notified each of the plaintiffs herein that it would construct said lateral of sufficient elevation and to a certain point near the west side-line of the land of said T. E. Fitzgerald and with the understanding between said defendant and the plaintiffs herein that they would then construct a common [17] lateral for a certain distance across the land of said Fitzgerald and then said West could make connections therewith with a lateral leading to his land for the irrigation thereof; that this arrangement was made and agreed upon by reason of the location of the lands of the plaintiffs herein, the same being adjoining and contiguous.

IX.

That during the year 1909, said plaintiffs, at great expense, constructed the necessary laterals, ditches, flumes, and gates leading from the point aforesaid at which they were to connect with the said defendant company irrigation system to and over said lands of said plaintiffs for taking and distributing water thereon and said plaintiffs were ready, willing and fully prepared, and said ditches and flumes of said plaintiffs were properly located, constructed and of sufficient capacity to receive and distribute the water they were entitled to under said deeds upon their said lands for the irrigation thereof.

X.

That the boundaries of the lands of each of said plaintiffs and all of the same lie under the canals, laterals, etc., making up said irrigation system of the defendant and is now, and has been, during all the times mentioned herein, susceptible of irrigation under said system; that said tracts of land are dry and arid in character and require the artificial use of water thereon before crops of any kind can be successfully raised; that there is no water of any kind available or obtainable on or near said lands, which can be utilized for irrigation, cultivation, reclamation or other purposes on said land, other than through said irrigation system, nor has there been during any of the times mentioned herein, all of which said defendant company at all times well knew. [18]

XI.

That said defendant corporation is insolvent in law and in fact and unable to pay its debts or meet its current obligations as they become due, and is without means to complete said system, especially said lateral No. 33, so as to deliver water to each of these plaintiffs in accordance with their said deeds; that there are no assets of said defendant company available for the completion of said system, especially said lateral No. 33, except the amounts remaining unpaid on the deferred payments of deeds executed by said company to purchasers of water rights under said system and that there are a large number of said deferred payments still remaining unpaid, amounting to many thousands of dollars and more than sufficient to complete said system and especially

said lateral No. 33, the completion of which will not exceed the sum of \$2,500.00.

XII.

That said plaintiff, T. E. Fitzgerald, has made three payments on his deed, amounting to the sum of \$1,638.72, and the said plaintiff, W. A. West, has made the first payment on his said deed, amounting to the sum of \$480.00; that in accordance with the terms of their said contract, the plaintiffs herein, and each of them, still owe to the defendant corporation the balance of the purchase price on the water right and water shares conveyed therein; that otherwise each of said plaintiffs has at all times since the execution of said deeds, fully performed each and every condition and obligation to be by him performed under his said deed or otherwise due to said company from each of said plaintiffs; that each of said plaintiffs has failed, and refused to pay the other deferred payments and interest on his said contract, for the reason that said defendant has failed and refused and neglected to complete said system, especially said lateral No. 33, and because the said defendant still fails and [19] refuses to place said system in a condition to deliver water to each of said plaintiffs for the year 1914, or at all, for the irrigation of its said lands or any part thereof; that each of said plaintiffs is ready and willing to keep and perform the terms and conditions of said deed in all things to be kept and performed by him whenever the defendant corporation is compelled by this Court to perform the terms and conditions of said deeds on its part.

XIII.

That said plaintiffs are jointly interested in and are joint owners with the other water-users of the said irrigation system, and they are entitled to have all deferred payments still remaining unpaid and the proceeds of both principal and interest received under and by virtue of all deeds and all moneys due and owing thereon and upon which any deferred payments or balances are due, applied upon the completion of said irrigation system, and these defendants are especially entitled to have sufficient thereof applied to the completion of said lateral No. 33, and to the performance of all other terms and conditions of said deeds of said plaintiffs to be kept and performed by said defendant corporation.

XIV.

That each of said plaintiffs has cultivated and improved large portions of their said lands at great expense and labor and have been unable to secure water under their said deeds for the irrigation thereof; that each of said plaintiffs has, during past irrigation seasons, suffered great damage and loss amounting to many thousand dollars, by reason of the destruction of their crops and trees planted on their said lands by reason of the failure to receive water under their said deeds and to have said lateral No. 33 completed as aforesaid; that they will be [20] in great need of water for the irrigation season of 1914 for the use on their said lands; that said defendant company does not intend to complete said system and especially said lateral No. 33, so that neither of said plaintiffs can secure water for the

irrigation of his lands under his said deed; that unless a receiver is appointed by this Court and authorized to take possession of this system and administer and complete the same, these plaintiffs, and each of them, and the other water-right holders under said system who have not received water in accordance with their water deeds, will suffer great and irreparable injury and loss.

XIV.

That the amounts or deferred payments due or to become due on said deeds amounted to several hundred thousand dollars; and that said American Falls Canal & Power Company has been, for several years, collecting, or causing to be collected, the deferred payments on the water deeds executed by said defendant to the settlers and water-users under said system, applying, or having applied the proceeds to its own use and benefit; that said defendants threaten to and, unless prevented by order of this Court, will continue to collect or cause to be collected any and all deferred payments or amounts unpaid on said water deeds as the same become due, and apply and appropriate said amounts so collected to the use and benefit of said defendant and thereby divert said amounts collected as aforesaid, so that the same will not be expended in the completion of said canal system as aforesaid.

XV.

That it is for the best interests of the plaintiffs herein and their only remedy is that a receiver be appointed for said defendant, American Falls Canal & Power Company, and authorized [21] to collect sufficient moneys due and owing or authorized to be-

come due and owing from the holders of water deeds entered into with said defendant corporation and to expend the same so collected as shall be necessary to complete said irrigation system, and especially said lateral No. 33, so that said plaintiffs and each of them may be supplied with the amount of water to be delivered to him as required by his said deed.

XVI.

That neither of said defendants has a plain, speedy and adequate remedy at law.

WHEREFORE, plaintiffs pray and demand:

I.

That some competent and proper person be appointed receiver by the Court, with power to complete said system and with full power to collect sufficient moneys due and owing or to become due and owing from the holders of water deeds entered into with said defendant corporation, and to expend the same so collected as shall be necessary to complete said irrigation system, and especially said lateral No. 33, so that said plaintiffs and each of them may be supplied with the amount of water to be delivered to him as required by his said deed.

II.

For costs of suit herein and for such other and further relief as may be just and equitable in the premises.

BAIRD & DAVIS,

Residence: American Falls, Ida.,

SULLIVAN & SULLIVAN,

Residence: Boise, Idaho,

Attorneys for Plaintiffs. [22]

The State of Idaho,
County of Ada,—ss.

W. E. Sullivan, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiffs in the above-entitled cause and makes this verification for and on behalf of said plaintiffs; that he has read the foregoing complaint, knows the contents thereof, and that he believes the facts stated therein to be true; that the reason why this verification is not made by the plaintiffs herein is because said plaintiffs are absent from Ada County, where said attorney resides; and for the further reason that the facts stated in said complaint are within the knowledge of this affiant.

W. E. SULLIVAN.

Subscribed and sworn to before me, this 2d day of April, 1914.

[Seal]

R. GARLAND DRAPER,
Notary Public. [23]

EXHIBIT "A."

AMERICAN FALLS CANAL & POWER CO.

WARRANTY DEED.

No. 357.

THIS AGREEMENT, entered into by and between THE AMERICAN FALLS CANAL & POWER COMPANY, a corporation (hereinafter called the Company), party of the first part, and T. E. FITZGERALD of American Falls, County of Oneida, State of Idaho (hereinafter called the purchaser), party of the second part:

WITNESSETH:

That for and in consideration of the sum of Four Thousand Dollars, to be paid to the PEOPLE'S BANK & TRUST COMPANY, a corporation, at its Bank, at Rockford, Illinois, as hereinafter specified, and in consideration of the mutual covenants and agreements in this contract contained, to be kept and performed the said parties hereby mutually covenant and agree as follows, to wit:

I.

The Company hereby warrants and conveys to the purchaser One Hundred Sixty shares of perpetual water right out of the water appropriated by it from the Snake River in Idaho, to be used during the irrigation season, that is to say, between the 1st day of April and the 1st day of November of each year, and for each and every year hereafter; together with a proportionate interest in the irrigation works, said proportionate interest being based upon the number of shares of water right finally sold in said canal system. Each share of water shall represent a carrying capacity sufficient to deliver water at the rate of one-eightieth of one second-foot per acre in main canal, and one-fiftieth of one second-foot per acre in all laterals, limiting, however, the maximum amount of water to be furnished to purchaser during any one irrigation season to two and one-half acre-feet. [24]

II.

The Company agrees to carry the water to which the purchaser is entitled under this conveyance through its canal system, and to measure and deliver the same at a point within one-half mile from each

legal subdivision of 160 acres.

The shares of water right herein conveyed shall attach to and become appurtenant to the following described land in Blaine Co., Idaho, to wit: West half of Northeast Quarter and Lot 1 of Section Twenty-five, Township Seven, South of Range Thirty East, and Lot Eleven of Section Nineteen, and Lots Six and Seven of Section Thirty, both in Township Seven South of Range Thirty-one East, B. M. of Section ——— Township ——— South, Range ——— East, Boise Meridian, containing One Hundred Sixty Acres.

(Plat for marking.)

III.

For the purpose of defraying the expense of operating and maintaining said canal system, the Company shall have the right to make an annual charge against the purchaser therefor, which charge shall be made equally and ratably against all of the users of the water from said canal system. But said annual charge shall not be based upon a rate exceeding twenty cents per acre-foot for all water delivered until the full allowance of two and one-half acre-feet shall have been delivered and the rate shall not exceed fifty cents per acre-foot for all water delivered in excess thereof, but no charge shall be made for any water unless delivered at the request of purchaser, provided, however, that during the first irrigation season that purchaser is able to secure water from said canal system one-fourth of the full allowance of two and one-half acre-feet of water shall be delivered free of all charge, thereafter the rates above specified shall govern. Said annual charge

shall be due and payable [25] on the first day of November of the year for which said charge is made, and the failure of the purchaser to pay said charge within thirty days after the same becomes due, shall constitute a default for which the Company may foreclose the rights of the purchaser as provided herein, and the Company shall have the right to suspend the further delivery of water to said purchaser while such default continues.

IV.

The purchaser agrees to pay the Company for said shares of water right, \$25.00 per acre in the manner following, to wit:

PAYMENTS.	Date Due.	Principal.		Interest.		Total Amount.	
	Month. Day. Year.	Dol.	Cts.	Dol.	Cts.	Dol.	Cts.
Cash	Dec. 8th, 1906	\$480.00		\$		\$	
First Deferred	Dec. 8th, 1907	320.00		211.20		531.20	
Second Deferred	Dec. 8th, 1908	400.00		192.00		592.00	
Third Deferred	Dec. 8th, 1909	400.00		168.00		568.00	
Fourth Deferred	Dec. 8th, 1910	400.00		144.00		544.00	
Fifth Deferred	Dec. 8th, 1911	400.00		120.00		520.00	
Sixth Deferred	Dec. 8th, 1912	400.00		96.00		496.00	
Seventh Deferred	Dec. 8th, 1913	400.00		72.00		472.00	
Eighth Deferred	Dec. 8th, 1914	400.00		48.00		448.00	
Ninth Deferred	Dec. 8th, 1915	400.00		24.00		424.00	

The first payment is hereby acknowledged. Deferred payments shall bear interest at the rate of six per cent per annum, payable annually. Any deferred payment paid before due shall stop the running of interest thereon.

V.

To secure the payment to the Company of all deferred payments and the interest thereon, and any charges made to defray the expense of operating and maintaining said canal system as herein provided, said Company shall have and retain a lien on said

shares of water right, and on all the right, title and interest of purchaser [26] acquired or hereafter to be acquired in and to the land herein described, which said lien shall be in all respects prior and superior to any and all liens now, or hereafter created, or attempted to be created by said purchaser, and the same shall remain in full force and effect until all the covenants herein made by the purchaser shall have been fully performed.

VI.

In the case the purchaser shall fail to make the payments aforesaid, or either of them, or the interest thereon, at the times and upon the terms prescribed, or shall fail to observe and perform any of the conditions or covenants herein contained, the holder hereof may declare all subsequent payments due, and may proceed at law or in equity to foreclose all of the right, title, and interest of said purchaser in and to said shares of water right and the land herein described; or the holder hereof may, at his option proceed to sell in accordance with any statutory remedy given by law, said shares of water right and said land in satisfaction of said sums.

VII.

The Company shall devise and make, subject to the approval of the State Engineer and the State Board of Land Commissioners of Idaho, all needful rules and regulations governing the management and distribution of water from said canal system, not inconsistent with the laws of the United States, the laws of the State of Idaho, and the contract between the State and the Company applicable thereto, which

rules and regulations shall provide for the distribution of water to the irrigators in turn or by rotation, as will best protect and serve the interests of all the users of water therein. In case of shortage of water in the Company's canal, through accident, drought or scarcity in any natural stream supplying said canal, or by reason [27] of improper diversion of water by any person, or for any other cause beyond its control, the Company shall not be liable for such shortage nor for any damage caused thereby, nor shall there be, by reason thereof, any deduction from any sum herein agreed to be paid by the purchaser.

VIII.

It is understood and agreed by both parties hereto that the PEOPLE'S BANK & TRUST COMPANY, a corporation with its principal office at Rockford, Illinois, Trustee, is exclusively entitled to receive and acknowledge all payments made upon this contract, and to execute in behalf of the Company receipts and acquittances therefor.

IX.

The purchaser hereby agrees to allow the Company any rights of way through the land herein described which may be needed for the construction of the canal or any lateral. Said rights of way shall be equal to the actual width of said canal or lateral at its base, from toe to toe, together with a strip of land along one side of the canal one hundred feet in width, and a strip of land along one side of every lateral thirty feet in width, all of which strips of land may be used for an open roadway or other useful purpose.

X.

IT IS FURTHER AGREED, that each and every of the terms and conditions herein expressed shall extend to and be binding upon the successors and assigns of the Company, and upon the heirs, legal representatives, successors or assigns of the purchaser. It is agreed between the parties hereto, that when the said purchaser shall have complied with all the conditions contained herein, and shall have completed all payments as herein provided, then this deed shall give a clear and unincumbered perpetual right to the purchaser for the [28] shares of water herein described, and thereupon the Company agrees to acknowledge the full payment and performance of purchaser, and to satisfy and discharge, in the manner provided by law, the lien herein created.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in duplicate this 8th day of December, A. D. 1906.

(Signed) AMERICAN FALLS CANAL &
POWER COMPANY.

By F. A. SWEET,

Vice-president.

[Corporate Seal]

J. R. SHRECK,

Secretary.

T. E. FITZGERALD,

Purchaser.

Signed, sealed and delivered by said Corporation
in the presence of

NORA M. JONES,

Witnesses.

Grantee's Duplicate Deed.

State of Idaho,
County of Bannock,—ss.

On this 4th day of March, in the year 1907, before me, Nora M. Jones, a Notary Public in and for the County of Bannock, State of Idaho, personally appeared J. R. Shreck, known to me to be the Secretary of the corporation that executed the instrument, and acknowledged to me that such corporation executed the same.

[Notarial Seal]

NORA M. JONES,
Notary Public. [29]

EXHIBIT "B."

AMERICAN FALLS CANAL & POWER CO.

WARRANTY DEED.

No. 358.

THIS AGREEMENT, entered into by and between THE AMERICAN FALLS CANAL & POWER COMPANY, a corporation (hereinafter called the Company), party of the first part, and W. A. WEST of American Falls, County of Oneida, State of Idaho (hereinafter called the purchaser), party of the second part,

WITNESSETH:

That for and in consideration of the sum of Four Thousand Dollars, to be paid to the PEOPLE'S BANK & TRUST COMPANY, a corporation, at its Bank, at Rockford, Illinois, as hereinafter specified, and in consideration of the mutual covenants and agreements in this contract contained, to be kept and performed the said parties hereby mutually covenant and agree as follows, to wit:

I.

The Company hereby warrants and conveys to the purchaser One Hundred Sixty shares of perpetual water right out of the water appropriated by it from the Snake River in Idaho, to be used during the irrigation season, that is to say, between the 1st day of April and the 1st day of November of each year, and for each and every year hereafter; together with a proportionate interest being based upon the number of shares of water right finally sold in said canal system. Each share of water right shall represent a carrying capacity sufficient to deliver water at the rate of one-eightieth of one second-foot per acre in main canal, and one-fiftieth of one second-foot per acre in all laterals, limiting, however, the maximum amount of water to be furnished to purchaser during any one irrigation season to two and one-half acre-feet. [30]

II.

The Company agrees to carry the water to which the purchaser is entitled under this conveyance through its canal system, and to measure and deliver the same at a point within one-half mile from each legal subdivision of 160 acres.

The shares of water right herein conveyed shall attach to and become appurtenant to the following described land in Blaine County, Idaho, to wit:

The West Half of Southeast Quarter and Lots Two, Three, and Four of Section Twenty-five, Township Seven, (7) South, Range 30 East, Boise Meridian, containing One Hundred Sixty acres.

(Plat for marking.)

III.

For the purpose of defraying the expense of operating and maintaining said canal system, the Company shall have the right to make an annual charge against the purchaser therefor, which charge shall be made equally and ratably against all of the users of the water from said canal system. But said annual charge shall not be based upon a rate exceeding twenty cents per acre-foot for all water delivered until the full allowance of two and one-half acre-feet shall have been delivered, and the rate shall not exceed fifty cents per acre-foot for all water delivered in excess thereof, but no charge shall be made for any water unless delivered at the request of purchaser, provided, however, that during the first irrigation season that purchaser is able to secure water from said canal system one-fourth of the full allowance of two and one-half acre-feet of water shall be delivered free of all charge, thereafter the rates above specified shall govern. Said annual charge shall be due and payable on the first day of November of the year for which said charge is made, and the failure of the purchaser to pay said charge within thirty days after the same becomes due, shall constitute a default for which the Company may foreclose the [31] rights of the purchaser as provided herein, and the Company shall have the right to suspend the further delivery of water to said purchaser while such default continues.

IV.

The purchaser agrees to pay the Company for said

shares of water right, \$25.00 per share in the manner following, to wit:

PAYMENTS.	Date Due.			Principal.		Interest,		Total Amount.	
	Month.	Day.	Year.	Doll.	Cts.	Doll.	Cts.	Doll.	Cts.
Cash	Dec.	8th,	1906	\$480.00		\$		\$	
First Deferred	Dec.	8th,	1907	320.00		211.20		531.00	
Second Deferred	Dec.	8th,	1908	400.00		192.00		592.00	
Third Deferred	Dec.	8th,	1909	400.00		168.00		568.00	
Fourth Deferred	Dec.	8th,	1910	400.00		144.00		544.00	
Fifth Deferred	Dec.	8th,	1911	400.00		120.00		520.00	
Sixth Deferred	Dec.	8th,	1912	400.00		96.00		496.00	
Seventh Deferred	Dec.	8th,	1913	400.00		72.00		472.00	
Eighth Deferred	Dec.	8th,	1914	400.00		48.00		448.00	
Ninth Deferred	Dec.	8th,	1915	400.00		24.00		424.00	

The first payment is hereby acknowledged. Deferred payments shall bear interest at the rate of six per cent per annum, payable annually. Any deferred payment paid before due shall stop the running of interest thereon.

V.

To secure the payment to the Company of all deferred payments and the interest thereon, and any charges made to defray the expense of operating and maintaining said canal system as herein provided, said Company shall have and retain a lien on said shares of water right, and on all the right, title and interest of purchaser acquired or hereafter to be acquired in and to the land herein described, which said lien shall be in all respects prior and superior to any and all liens now, or hereafter created, or attempted to be [32] created by said purchaser, and the same shall remain in full force and effect until all the covenants herein made by the purchaser shall have been fully performed.

VI.

In case the purchaser shall fail to make the pay-

ments aforesaid, or either of them, or the interest thereon, at the times and upon the terms prescribed, or shall fail to observe and perform any of the conditions or covenants herein contained, the holder hereof may declare all subsequent payments due, and may proceed at law or in equity to foreclose all of the right, title, and interest of said purchaser in and to said shares of water right and the land herein described; or the holder hereof may, at his option proceed to sell in accordance with any statutory remedy given by law, said shares of water right and said land in satisfaction of said sums.

VII.

The Company shall devise and make, subject to the approval of the State Engineer and the State Board of Land Commissioners of Idaho, all needful rules and regulations governing the management and distribution of water from said canal system, not inconsistent with the laws of the United States, the laws of the State of Idaho, and the contract between the State and the Company applicable thereto, which rules and regulations shall provide for the distribution of water to the irrigators in turn or by rotation, as will best protect and serve the interests of all the users of water therein. In case of shortage of water in the Company's canal, through accident, drought or scarcity in any natural stream supplying said canal, or by reason of improper diversion of water by any person, or for any other cause beyond its control, the Company shall not be liable for such shortage nor for any damage caused [33] thereby, nor shall there be, by reason thereof, any deduction

from any sum herein agreed to be paid by the purchaser.

VIII.

It is understood and agreed by both parties hereto that the PEOPLE'S BANK & TRUST COMPANY, a corporation with its principal office at Rockford, Illinois, Trustee, is exclusively entitled to receive and acknowledge all payments made upon this contract, and to execute in behalf of the Company receipts and acquittances therefor.

IX.

The purchaser hereby agrees to allow the Company any rights of way through the land herein described which may be needed for the construction of the canal or any lateral. Said rights of way shall be equal to the actual width of said canal or lateral at its base, from toe to toe, together with a strip of land along one side of the canal one hundred feet in width, and a strip of land alongside of every lateral thirty feet in width, all of which strips of land may be used for an open roadway or other useful purpose.

X.

IT IS FURTHER AGREED, that each and every of the terms and conditions herein expressed shall extend to and be binding upon the successors and assigns of the Company, and upon the heirs, legal representatives, successors or assigns of the purchaser. It is agreed between the parties hereto, that when the said purchaser shall have complied with all the conditions contained herein, and shall have completed all payments as herein provided, then this deed shall give a clear and unincumbered perpetual

right to the purchaser for the shares of water herein described, and thereupon the [34] Company agrees to acknowledge the full payment and performance of purchaser, and to satisfy and discharge, in the manner provided by law, the lien herein created.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in duplicate this 8th day of December, A. D. 1906.

(Signed) AMERICAN FALLS CANAL &
POWER COMPANY.

By F. A. SWEET,
Vice-President.

J. R. SHRECK,
Secretary.

[Corporate Seal]

W. A. WEST,
Purchaser.

Signed, sealed and delivered by said Corporation in the presence of

NORA M. JONES,
Witnesses.

Copy for State of Idaho.

State of Idaho,
County of Bannock,—ss.

On this 7th day of March, in the year 1907, before me, Nora M. Jones, a Notary Public in and for the County of Bannock, State of Idaho, personally appeared J. R. Shreck, known to me to be the Secretary of the corporation that executed the instrument, and acknowledged to me that such corporation executed the same.

[Notarial Seal]

NORA M. JONES,
Notary Public. [35]

United States of America,
District of Utah,—ss.

I, Jerrold R. Letcher, Clerk of the United States District Court for the District of Utah, do hereby certify that Charles Baldwin is the Referee in Bankruptcy of this Court for Salt Lake County, Utah, that he has filed in my office the bond of the trustee in bankruptcy in the Matter of American Falls Canal and Power Company, Voluntary Bankrupt, in which it appears that said trustee, Glenn R. Bothwell, was duly appointed as such trustee on the 16th day of March, 1914, and gave bond for the sum of \$100,000, with sureties approved by said referee, same being F. A. Sweet and R. E. McConaughey. I further certify that orders of adjudication of bankruptcy of said American Falls Canal & Power Company, and reference to Charles Baldwin, as referee in this cause, were made on the 27th day of February, 1914.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Salt Lake City, in said District this 10th day of April, A. D. 1914.

[Seal] JERROLD R. LETCHER,
Clerk United States District Court for the District
of Utah.

[Endorsed]: Filed April 13th, 1914. A. L. Richardson, Clerk. [36]

*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Order to Show Cause.

It appearing to the Court from the petition of Glenn R. Bothwell, as trustee in the matter of the bankruptcy of the American Falls Canal & Power Company, that the said American Falls Canal & Power Company was on the 24th day of February, 1914, by the District Court of the United States for the District of Utah, duly adjudicated a bankrupt, and that such proceedings were thereafter had that the said Glenn R. Bothwell became and now is the duly appointed, qualified and acting trustee of said bankrupt. And it further appearing to the Court that said bankrupt estate consists of real and personal property located in Utah and Idaho, and that on the 2d day of April, 1914, one T. E. Fitzgerald and one W. A. West, acting by and through Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, instituted a proceeding in the District Court for Power County, State of Idaho, and are seeking to secure the appointment of a receiver to take possession of the assets of said bankrupt:

NOW, THEREFORE, upon motion of J. D. Skeen, one of the solicitors for the petitioner, it is ordered that the said T. E. Fitzgerald and W. A. West, and

Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, appear [37] before this court at Boise, on the 17th day of April, 1914, at 10 o'clock A. M., and show cause, if any they have, why they should not be enjoined and restrained from further prosecuting said action wherein T. E. Fitzgerald and W. A. West are plaintiffs and the American Falls Canal & Power Company, a corporation, is defendant, and from presenting said order to show cause or otherwise applying to said court or any other court in the State of Idaho for an order appointing a receiver of said American Falls Canal & Power Company, or of any of its property located in the State of Idaho or elsewhere, or from directly or indirectly taking or attempting to take possession of any of the real or personal property or assets of said American Falls Canal & Power Company, or from causing or seeking to cause any other person or corporation to take possession of said property or assets, or otherwise interfering with the administration of the assets of said corporation or the possession, use or disposition of its property.

And it is further ordered that until said matter can be heard on said 17th day of April, 1914, or any other date to which it might be by this Court continued, it is ordered that the said T. E. Fitzgerald, and W. A. West and Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, be and they are hereby enjoined and restrained from doing or attempting to do any of the things hereinabove specified.

Provided, however, that this order shall not take

effect until the said Glenn R. Bothwell, as such petitioner, shall have executed and delivered to the clerk of this court a good and sufficient undertaking in the penal sum of Twenty-five Hundred [38] (\$2,500.00) Dollars.

Dated this 13th day of April, 1914.

FRANK S. DIETRICH,
Judge.

Service of a copy of the foregoing order admitted this 13th day of April, 1914.

SULLIVAN & SULLIVAN,
Attys. for West and Fitzgerald.

[Endorsed]: Filed April 13, 1914. A. L. Richardson, Clerk. [39]

Trustee's Bond.

THE AETNA ACCIDENT AND LIABILITY COMPANY, HARTFORD, CONNECTICUT.

MORGAN G. BULKELEY, PRESIDENT.

*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS
CANAL & POWER COMPANY, a Corporation,

Bankrupt.

UNDERTAKING.

Glenn R. Bothwell, as trustee in the matter of the bankruptcy of the American Falls Canal & Power Company, having made application to this Court for

an order enjoining and restraining T. E. Fitzgerald, and W. A. West, and Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, from prosecuting a certain action in the District Court for Power County, State of Idaho, and the Court having made said order conditioned upon the execution and delivery to the clerk of this court, for the use of the parties so enjoined, of an undertaking in the penal sum of Twenty-five Hundred (\$2500.00) Dollars:

NOW, THEREFORE, pursuant to said proceedings and in consideration of the execution of said order, we, the undersigned, The Aetna Accident and Liability Company, a corporation of the State of Connecticut and licensed to become sole surety on bonds in the State of Idaho, undertake and agree on behalf of said Glenn R. Bothwell to pay to the clerk of the court, for the use and benefit of the said T. E. Fitzgerald and W. A. West and Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, of all damages that they may sustain by reason of the issuance of said restraining order, if finally determined that said order was erroneously or wrongfully issued, not exceeding, however, the sum of Twenty-five Hundred (\$2500.00) Dollars.

IN WITNESS WHEREOF, we have hereunto set our hands this 10th day of April, A. D. 1914.

THE AETNA ACCIDENT AND LIABILITY
COMPANY,

By B. F. GROWEG,
Resident Vice-President.

Attest: JNO. T. BRUNN, [Seal]
Resident Assistant Secretary.

Countersigned:

THE AETNA ACCIDENT & LIABILITY
CO.

By H. K. SEAL,
Res. V. P.
H. K. SEAL,
For Pettengill, Perrault & Rossi,
Resident Agent. [40]

State of Utah,
County of Salt Lake,—ss.

On this 10th day of April, 1914, before me personally came B. F. Groweg, to me known, who, being by me duly sworn, did depose and say: That she resides in the City of Salt Lake; that she is Resident Vice-President of The Aetna Accident and Liability Company, the corporation described in, and which executed the within instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that she is acquainted with Jno. T. Brunn; that she knows him to be the Resident Assistant Secretary of said company; that the signature of said Jno. T. Brunn, subscribed to said instrument, is in the genuine handwriting of said Jno. T. Brunn, and was thereto sub-

scribed by like order of said Board of Directors, and in the presence of him, the said B. F. Groweg.

E. CEEPTON,
Notary Public.

My Commission expires 12-5-16.

At a regular meeting of the Board of Directors of The Aetna Accident and Liability Company, duly called and held on the 28th day of December, A. D. 1911, the following By-Law was adopted:

ARTICLE 8, RESIDENT OFFICERS, ATTORNEYS-IN-FACT AND AGENTS.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other Officer could bind it. Such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may,

subject to the provisions and limits named in their certificate of authority, fix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and *other obligatory* in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. *Attorneys-in-Fact* may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney-in-Fact when attested by any other Attorney-in-Fact shall be as binding upon the Company as if signed, sealed and attested by any Officer of the Company. [41]

State of Connecticut,
County of Hartford,—ss.

I, Norman C. Stevens, of the Aetna Accident and Liability Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company,
at Hartford, Conn., this 11th day of February, 1914.

[Seal]

NORMAN C. STEVENS,

Secretary.

THE AETNA ACCIDENT AND LIABILITY
COMPANY, HARTFORD, CONNECTICUT.

CERTIFICATE OF AUTHORITY OF RESIDENT
VICE-PRESIDENT.

KNOW ALL MEN BY THESE PRESENTS, THAT B. F. Groweg, has been and is hereby appointed Resident Vice-President of The Aetna Accident and Liability Company, of Hartford, Connecticut, at Salt Lake City, Utah, and as such Resident Vice-President has full power and authority to sign and execute, on behalf of The Aetna Accident and Liability Company, any and all bonds and undertakings, and all bonds and undertakings signed by him, when sealed and attested by a Resident Assistant Secretary, shall be as valid and binding upon the Company as if said bonds and undertakings had been signed by the President and duly sealed and attested.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of The Aetna Accident and Liability Company at a meeting duly called and held on the 28th day of December, 1911:

ARTICLE 8, RESIDENT OFFICERS, ATTOR-
NEYS-IN-FACT AND AGENTS.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any

such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other Officer could bind it; such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

IN WITNESS WHEREOF, The Aetna Accident and Liability Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 21st day of October, A. D. 1913.

THE AETNA ACCIDENT AND LIABILITY COMPANY.

[Seal]

By J. S. ROWE,
Secretary.

DANIELS, GEO.,

Assistant Secretary. [42]

State of Connecticut,
County of Hartford,—ss.

On this 21st day of October, A. D. 1913, before me personally came J. S. Rowe, to me known, who, being by me duly sworn, did depose and say: That he resides in the City of Hartford, State of Connecticut; that he is the Secretary of The Aetna Accident and Liability Company, the corporation described in and

which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[Seal]

JAMES F. McEVITT,
Notary Public.

My commission expires Jan. 31, 1914.

THE AETNA ACCIDENT AND LIABILITY
COMPANY, HARTFORD, CONNECTICUT.

CERTIFICATE OF AUTHORITY OF RESIDENT
SECRETARY.

KNOW ALL MEN BY THESE PRESENTS, THAT John T. Brunn, has been and is hereby appointed Resident Assistant Secretary of The Aetna Accident and Liability Company, of Hartford, Connecticut, at Salt Lake City, Utah, and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings and all bonds and undertakings sealed and attested by him when signed by a duly appointed Resident Vice-President shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of The Aetna Accident and Liability Company, at a meeting duly called and held on the 28th day of December, 1911.

ARTICLE 8, RESIDENT OFFICERS, ATTORNEYS-IN-FACT AND AGENTS.

Section 1. The President, any Vice-President or the Secretary may, from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 2. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other officer could bind it; Such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

IN WITNESS WHEREOF, The Aetna Accident and Liability Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, duly attested by its Assistant

Secretary, this 21st day of October, A. D. 1913.

THE AETNA ACCIDENT AND LIABILITY COMPANY.

By J. S. ROWE,
Secretary.

[Seal]

Attest: DANIELS, G.,
Assistant Secretary. [43]

State of Connecticut,
County of Hartford,—ss.

On this 21st day of October, A. D. 1913, before me personally came J. S. Rowe, to me known, who, being by me duly sworn, did depose and say: That he resides in the City of Hartford, State of Connecticut; that he is the Secretary of The Aetna Accident and Liability Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[Seal]

JAMES F. McEVITT,
Notary Public.

My Commission expires Jan. 31, 1914.

Approved: April 13, 1914.

DIETRICH,
Judge.

[Endorsed]: Filed April 13, 1914. A. L. Richardson, Clerk. [44]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
AND POWER COMPANY, a Corporation,
Bankrupt.

**Order [Enjoining and Restraining T. E. Fitzgerald
and W. A. West from Proceeding Further in
Action, etc.].**

The order to show cause why T. E. Fitzgerald and W. A. West should not be enjoined from further prosecuting an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, wherein T. E. Fitzgerald and W. A. West are plaintiffs and the American Falls Canal & Power Company is defendant, praying for the appointment of a receiver, coming on regularly for hearing, J. D. Skeen appearing as attorney for Glen R. Bothwell, Trustee of said Bankrupt, and W. E. Sullivan appearing as attorney for said T. E. Fitzgerald and W. A. West; and it appearing to the Court that said bankrupt was possessed of property located within the State of Idaho, and that the legal title and possession of said property was in the trustee prior to the institution of said proceeding; and it further appearing that it is the duty of the said trustee in bankruptcy to apply to the referee in bankruptcy for authority to reconstruct and rebuild a certain lateral conveying water from American Falls Canal & Power Co. system to the lands of

said T. E. Fitzgerald and W. A. West—commonly known as Lateral No. 33—so as to properly irrigate said lands: [45]

IT IS ORDERED, That said T. E. Fitzgerald and W. A. West be, and they are, hereby enjoined and restrained from proceeding further in said action in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, wherein the said T. E. Fitzgerald and W. A. West are plaintiffs, until further order of this Court; and

IT IS FURTHER ORDERED, That the said Glen R. Bothwell, as trustee in the Matter of the Bankruptcy of the American Falls Canal & Power Co., make application at once for authority from the said bankruptcy court within the District of Utah to reconstruct and rebuild said Lateral No. 33 in such a manner as to convey water from the main canal of the American Falls Canal & Power Company System to the lands owned by the said T. E. Fitzgerald and W. A. West for the proper irrigation of said lands, pursuant to the contracts attached to complaint in said action and to the Petition herein as Exhibit "B," the expense of such reconstruction work to be paid as directed by said Bankruptcy Court; and

IT IS FURTHER ORDERED, That the said Glen R. Bothwell, as such trustee, report to this Court his proceedings in the matter on the 5th day of May, 1914, at the hour of ten o'clock A. M.

Dated this 17th day of April, 1914.

FRANK S. DIETRICH,
United States District Judge.

[Endorsed]: Filed April 17, 1914. A. L. Richardson, Clerk. [46]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Answer to Order to Show Cause.

COME NOW T. E. Fitzgerald, W. A. West, Spencer L. Baird, Ben W. Davis, W. E. Sullivan, and L. L. Sullivan, and in response to the Order to Show Cause herein respectfully show:

I.

That they admit that said T. E. Fitzgerald and W. A. West, commenced an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, wherein the American Falls Canal & Power Company was defendant as set forth in the petition herein; and further admit that the copy of the complaint attached to the petition herein is a true copy of the complaint filed in said cause; and it is further admitted that in and by said action the plaintiffs therein are endeavoring to secure the appointment of a receiver to complete Lateral No. 33 of the Canal System of said defendant company and to have said receiver authorized and directed to collect certain deferred payments from the water-right holders in an amount sufficient to complete said lateral, not to exceed the sum of

\$2,500.00, as alleged in the petition herein and as set forth in the complaint in said action. [47]

II.

That said answering parties herein deny that the application of said deferred payments to the completion of said canal will in any wise damage other creditors of said bankrupt contrary to the provisions of said bankruptcy law or otherwise, and in this respect allege, that said deferred payments to the amount necessary to complete said Lateral No. 33 are not property or assets of said bankrupt estate within the meaning of the bankruptcy law now in force; that the trustee of the estate of said bankrupt is not vested by operation of law or otherwise with the title of the bankrupt, if any, in and to said deferred payments; that the same are not such assets, if assets at all, which are available or can be made available for the payment of the claims of the creditors of said bankrupt; that under the laws of the State of Idaho, wherein said canal system is located and the lands of the water-right holders under said system are also located, said deferred payments or sufficient thereof must be applied for the completion of said Lateral No. 33.

WHEREFORE, These answering parties pray:

I. That no restraining order be made or entered as prayed for in the petition herein.

II. That if the Court herein concludes that said deferred payments are assets of the estate of said bankrupt, and should be under the control of an ancillary trustee to be appointed by this Court, then said T. E. Fitzgerald and W. A. West further pray

that this Court treat their said complaint filed in the District Court of the State of Idaho, in and for Power County, a copy of which is among the files of this proceeding, as their petition and that the relief prayed for therein may be granted [48] by this Court and that the ancillary trustee appointed by said Court be directed to complete said Lateral No. 33 and that the said trustee be authorized to collect the deferred payments in an amount sufficient to complete the same as prayed for in said complaint.

III. And for such other and further relief as may be just and equitable in the premises.

T. E. FITZGERALD, and
W. A. WEST,

By BAIRD & DAVIS,
SULLIVAN & SULLIVAN,
Attorneys for Said Parties.

State of Idaho,
County of Ada,—ss.

W. E. Sullivan, being first duly sworn, deposes and says:

That he is one of the attorneys for the answering parties, T. E. Fitzgerald and W. A. West, in the above-entitled cause, and makes this verification for and on behalf of said parties; that he has read the foregoing, knows the contents thereof and that he believes the facts stated therein to be true; that the reason why this verification is not made by the said parties, T. E. Fitzgerald and W. A. West, is because said parties are absent from Ada County, where said attorney resides.

W. E. SULLIVAN.

Subscribed and sworn to before me this 16th day of April, 1914.

[Notarial Seal] R. GARLAND DRAPER,
Notary Public.

[Endorsed]: Filed April 17, 1914. A. L. Richardson, Clerk. [49]

[Order on Application for Restraining Order.]

At a stated term of the District Court for the District of Idaho, held at Boise, Idaho, Friday, the 17th day of April, 1914. Present: The Honorable FRANK S. DIETRICH, Judge.

No. 679.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

On this day this cause came on to be heard upon the application of Glenn R. Bothwell, Trustee, for a restraining order to stay proceedings in action in the District Court for Power County, Idaho, wherein T. E. Fitzgerald and W. A. West have instituted proceedings for the appointment of a receiver to take possession of the assets of said bankrupt, J. D. Skeen, Esqr., appearing as counsel on behalf of the Trustee, and Messrs. Sullivan & Sullivan, on behalf of the said T. E. Fitzgerald and W. A. West, and after argument by the respective counsel, the Court ordered that an order be drawn by the attorneys in accordance with the views of the Court, to be signed and filed in the case. [50]

Report of Trustee.

*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

REPORT.

Comes now Glenn R. Bothwell, as trustee in the above matter, and respectfully reports to the Court:

That immediately after the entry of the order herein on the 17th day of April, 1914, wherein he was required to make application to the District Court of the United States for the District of Utah, for instructions respecting lateral No. 33 of the American Falls Canal, he proceeded to secure such information as he deemed necessary to fully present said matter to said Court, and after securing copies of all necessary documents, he caused said matter to be presented to Hon. John A. Marshall, Judge of the said Court, in chambers, and his attorney in said matter was informed that said court was then engaged in the trial of jury cases, and would not be able to hear said matter before the 2d day of May, 1914.

That thereafter and before the *said and day* of May, 1914, your petitioner, by his attorney, called on said Judge again for the purpose of urging the hearing of said petition at an earlier date; that said Judge was then in the midst of the trial of an im-

portant jury case, and again indicated that he could not hear said matter before Saturday, May 2d, 1914.

That on said date your petitioner, by his attorney, appeared in said court before the Hon. John A. Marshall presiding, [51] and presented his petition in said matter, a copy of which is hereto attached and made a part of this return. That after said petition was duly presented and said matter fully explained to the Court, said Court took the matter under advisement.

Your petitioner further reports that by said petition and the exhibits thereto attached, said entire controversy is fully and fairly presented to the Court, except in so far as oral descriptions of said lateral No. 33 as constructed by engineers and others fully informed as to the facts may be necessary for a full determination of said controversy.

Your petitioner further says that as an officer of said District Court of the United States for the District of Utah, and in performance of his duty to this Court in this ancillary proceeding, he will present to the said District Court of the United States for the District of Utah any further or additional oral or documentary evidence that this Court may deem necessary or advisable for a proper determination of said controversy.

Respectfully submitted,

J. D. SHEEN,

Attorney for Glenn R. Bothwell, Trustee in Bankruptcy of the American Falls Canal & Power Company. [52]

*In the United States District Court in and for the
District of Utah.*

No. 1763—IN BANKRUPTCY.

In the Matter of AMERICAN FALLS CANAL &
POWER COMPANY, a Corporation,
Voluntary Bankrupt.

**Petition [for Determination and Adjudication of
Controversies, etc.].**

The petition of Glenn R. Bothwell, as Trustee in Bankruptcy, of the American Falls Canal & Power Company, a corporation, respectfully shows to the Court:

I.

That on the 24th day of February, A. D. 1914, the American Falls Canal & Power Company, a corporation organized under and pursuant to the laws of the State of Utah, filed its voluntary petition in bankruptcy in the above-entitled court, wherein it prayed to be adjudicated a bankrupt under the laws of the United States; that thereafter, on the 27th day of February, A. D. 1914, said Court made and entered its order in said matter, adjudicating said American Falls Canal & Power Company a bankrupt, within the purview of said laws of the United States, and referred the estate of said bankrupt to the Honorable Charles Baldwin, Referee in Bankruptcy of said court, for administration.

II.

That after the reference of said matter to said Referee, said Referee caused notice to creditors to

be published, pursuant to law and the order of the Court, and on the 16th day of March, A. D. 1914, a meeting of the creditors of said bankrupt was held before the Honorable Charles Baldwin, Referee in Bankruptcy, at Salt Lake City, State of Utah, and at said meeting, claims were proved and allowed by said Referee, and the creditors of said Bankrupt, by their votes, elected Glenn R. Bothwell, your petitioner, Trustee in Bankruptcy in this matter, and upon such [53] selection, said Referee duly made and entered an order, appointing the said Glenn R. Bothwell, Trustee in such proceeding, and fixed his bond at the sum of \$100,000.00. That thereafter, on said date, said Glenn R. Bothwell executed and delivered said bond and did all things that were necessary to qualify him as such Trustee, and he, your petitioner, is now the duly elected, appointed, qualified and acting Trustee in the matter of the bankruptcy of the said American Falls Canal & Power Company.

III.

Your petitioner, in order to set forth the character of said bankrupt's estate, further represents that on the 18th day of August, A. D. 1894, the United States enacted a law providing for the reclamation of arid lands in the various States, the same being entitled "An act making appropriation for the sundry civil expenses of the Government for the fiscal year ending June 30th, A. D. 1893, and for other purposes" (28 Stat. L. 422), and amendment thereto, by the act of June 11th, A. D. 1896 (29 Stat. L. 434), and also the amendment thereto by the act of March

3d, 1901 (31 Stat. L. 1188), commonly known and hereinafter designated the "Carey Act."

IV.

That by Chapter 5, title 7, of the Revised Codes of the State of Idaho, the State of Idaho accepted the terms and conditions of said Carey Act, together with all the amendments thereto, and all the grants of land to the said State of Idaho under the provisions of said act and the amendments thereto, and by said chapter, said State of Idaho vested the selection, management and disposal of said lands in the State Board of Land Commissioners of said State, as constituted by section 7, of article 9, of the Constitution of the State of Idaho, and gave said State Board of Land Commissioners and the State Engineer of said State the supervision and direction of the construction of a canal and [54] irrigation system.

V.

That pursuant to said Carey Act, and the acceptance thereof by the State of Idaho, as hereinbefore set forth, the United States, through its officers, on the 19th day of July, A. D. 1899, entered into a contract with the State of Idaho by which were set forth certain terms upon which said State of Idaho should permit the construction of said canal and irrigation system.

VI.

Thereafter, pursuant to said Carey Act, the acts of the Legislature of the State of Idaho, accepting the terms and provisions thereof, and said contract entered into between the United States and the State

of Idaho, the State of Idaho did, on the 23d day of February, A. D. 1901, enter into a contract in writing with the said American Falls Canal & Power Company, a corporation, organized and existing under the laws of the State of Utah, and duly authorized to do business in the State of Idaho, by the terms of which contract the said American Falls Canal & Power Company agreed to construct a canal from a point on the west bank of Snake River, about ten miles north and east of the City of Blackfoot, State of Idaho; thence southwesterly, through the counties of Bingham and Blaine (now Power), for the irrigation of the lands segregated, as set forth in said contract between the United States and the State of Idaho. Said contract entered into by and between the State of Idaho and said company, among other things provided specifications as to the construction of said canal and irrigation system, rights of way over said lands for the construction and operation of said canal and irrigation system, and that said company should build said canal and irrigation system, with all the structures belonging thereto, in a [55] good and substantial manner, and in accordance with the specifications therein provided, and under the supervision and to the satisfaction of the State Engineer of Idaho, and that said company, upon completion thereof, transfer to the owners and holders of shares of water right the control and management of said system, together with all rights and franchises belonging thereto.

VII.

That after the execution of said contract between

the State of Idaho and the said company, said company proceeded to construct said canal and irrigation system, and to sell, after permission was granted by the State of Idaho, shares of water right to actual settlers under said system.

VIII.

For the purpose of securing funds for the construction of said canal and irrigation system, said American Falls Canal & Power Company did, on the 2d day of October, A. D. 1905, execute a deed of trust to the People's Bank & Trust Company, a corporation having its office and principal place of business at Rockford, Illinois, trustee for bondholders, to secure the payment of a first mortgage bond issue in the sum of \$300,000.00, and under said deed of trust did mortgage to said People's Bank & Trust Company all its corporate property, of whatever kind, real or personal, wherever situated, then owned or thereafter acquired, and particularly the right of way of said company's irrigation canal, together with all of the buildings, ditches, laterals, flumes, head-gates, syphons, wasteways, appliances, appurtenances, fixtures and personal property then or thereafter built or constructed; also a water right, consisting of 1250 cubic feet of water per second of time, continuous flow, diverted from the Snake River, in said State; also all rights of way, easements, privileges and franchises granted by the United States Government by the Constitution and [56] laws of the State of Idaho, or by purchase, or by rights under said contract between the State of Idaho and the United States, and said contract between the State

of Idaho and said company; also all notes, mortgages, contracts and other evidences of indebtedness then owned or thereafter acquired by said company, which had been or might thereafter be received in payment for water rights sold and to be sold to the owners and claimants of land susceptible of irrigation from said irrigation works, all of which said notes, mortgages, contracts and other evidence of indebtedness to be deposited with said trustee for bondholders for the purposes therein mentioned; also all the right, claim, interest and lien then existing or thereafter acquired by said company, in whatsoever manner, in and to the tracts of land hereinbefore mentioned; and the said deed of trust was duly recorded in the counties of Bingham and Blaine (now Power), State of Idaho.

IX.

For the purpose of securing further funds for the construction of said canal and irrigation system, said American Falls Canal & Power Company did, on the first day of October, A. D. 1908, execute a second deed of trust to said People's Bank & Trust Company, trustee for bondholders, to secure the payment of an issue of second mortgage bonds in the sum of \$400,000.00, and under said deed of trust, did give a second mortgage upon all of said company's corporate property, as in the next preceding paragraph set forth, and said deed of trust is duly recorded in the Counties of Bingham and Blaine (now Power), State of Idaho.

X.

Your petitioner further alleges that the several

bonds included in said first and second issue were negotiated and sold at substantially the face thereof, less the cost only of marketing, and the moneys realized therefrom devoted to the betterment of said property and the construction of said canal system; that of the [57] first issue of bonds, all has been paid except the sum of \$56,000.00, due on the first day of October, A. D. 1915, and of the second bond issue no part has yet been paid, and the principal sum of \$400,000.00 is due on the first day of October, A. D. 1918.

XI.

That on the 8th day of December, A. D. 1906, for and in consideration of the sum of \$4,000.00 to be paid with interest in ten annual installments, the receipt of the first of which, a cash payment of \$80.00, being thereby acknowledged, said American Falls Canal & Power Company made and executed its certain warranty deed in writing, a copy of which is hereto attached, marked Exhibit "A," and by this reference thereto made a part hereof, and the same was delivered, in keeping with said deeds of trust, to the Utah Mortgage Loan Corporation, fiscal agent for the People's Bank & Trust Company, trustee for the bondholders, at Logan, State of Utah; by which said deed said company conveyed to W. A. West 160 shares of water right, from its said appropriation, together with a proportionate interest in said canal and irrigation system.

XII.

That on the 8th day of December, A. D. 1906, for and in consideration of the sum of \$4,000.00 to be paid with interest in ten annual installments, the

receipt of which, a cash payment of \$480.00, being thereby acknowledged, said American Falls Canal & Power Company made and executed its certain warranty deed in writing, a copy of which is hereto attached, marked Exhibit "B," and by this reference thereto made a part hereof, and the same was delivered, in keeping with said deeds of trust, to the Utah Mortgage Loan Corporation, fiscal agent for the People's Bank & Trust Company, trustee for the bondholders, at Logan, Utah; by which said deed, said company conveyed to Mary A. Fitzgerald 160 shares of water right, from its said appropriation, together with a proportionate interest in said canal and irrigation system. [58]

XIII.

That said American Falls Canal & Power Company notified, on or about the month of April, A. D. 1910, the water-users under said canal and irrigation system that said system was completed, and, pursuant to a general notice, a *meeting the* water-users of this system was held, at which meeting a majority of said water-users was present, and said water-users did, in said meeting assembled, resolve to organize an operating company for the control and management of said irrigation system. That during the month of June, A. D. 1910, the water-users under said canal and irrigation system did organize the Aberdeen-Springfield Canal Company, a corporation existing under and by virtue of the laws of the State of Idaho, for the purpose of taking over the control, possession, management and operation of said system, and said Aberdeen-Springfield Canal

Company made the delivery of water for the irrigation season of 1910 and every year thereafter.

XIV.

The said American Falls Canal & Power Company did, on the 28th day of November, A. D. 1910, present a petition to the Idaho State Board of Land Commissioners, wherein it set forth matters in connection with said transfer of said canal and irrigation system from said company to the said Aberdeen-Springfield Canal Company, and therein particularly alleged: the completion of said canal and irrigation system; the appointment by said Aberdeen-Springfield Canal Company of a committee to act in connection with the Engineer of said American Falls Canal & Power Company and the State Engineer in the examination of the system; the making of such an examination; the submitting of a report by said examining committee; the adoption of said report by the Aberdeen-Springfield Canal Company by a resolution and the vote of the shareholders thereon; the acceptance of shares of stock in said Aberdeen-Springfield Canal Company by said [59] water-users; and a petition that the said American Falls Canal & Power Company be relieved from further obligation as regards canal construction and the reclamation of lands, and that their bond for the proper fulfillment of their contract with the State be released. A copy of said petition is hereto attached and marked Exhibit "C"; a copy of the report of said examining committee is hereto attached and marked Exhibit "D"; a copy of said resolution of the Aberdeen-Springfield Canal Company is hereto attached and marked Ex-

hibit "E"; a copy of the report of D. C. Martin, State Engineer of the State of Idaho, to the Idaho State Board of Land Commissioners, made December 2, 1910, is hereto attached and marked Exhibit "F"; and a copy of an extract from the minutes of a meeting of the Idaho State Board of Land Commissioners held December 1st, A. D. 1910, is hereto attached and marked Exhibit "G"; and all of said exhibits are by this reference thereto made a part of this petition.

XV.

That the report of said examining committee sets forth thirteen (13) minor items in connection with the construction of said canal and irrigation system, which, in the opinion of said examining committee, should be corrected and improved by said American Falls Canal & Power Company; that thereafter, the said company executed and filed its bond in the sum of \$10,000.00, for the completion of said items; that said items have long since been completed, as suggested, and the bond given in connection therewith released.

XVI.

That prior to the time of the transfer of said canal and irrigation system to the water-users under said system, as represented by the said Aberdeen-Springfield Canal Company, hereinbefore described, the said W. A. West, mentioned in paragraph XI of this petition, and the said Mary A. Fitzgerald, mentioned in paragraph XII [60] of this petition, as holders of contracts for the purchase of water rights, had made certain objections to the construction work of

said American Falls Canal & Power Company in relation to a certain lateral No. 33, which was intended to supply the adjoining farms of said W. A. West and said Mary A. Fitzgerald with water, which said lateral No. 33 was constructed and built on or before August, A. D. 1909; that thereafter, to wit, on the 9th day of November, A. D. 1909, Mary A. Fitzgerald entered into a certain contract in writing for the extension of time for making payments and releasing said company from any and all claims for damages arising from any failure on the part of said company theretofore arising, and a copy of said contract is hereto attached and marked Exhibit "H"; and by this reference thereto made a part of this petition; and that the alleged defects in the construction of said lateral No. 33 were not among the said thirteen items suggested for improvement by the said examining committee.

XVII.

That after the transfer of said canal and irrigation system, hereinbefore mentioned, said Mary A. Fitzgerald and W. A. West reasserted their claims in connection with the construction of said lateral No. 33; that said company sought to adjust the controversy which ensued by offering to rebate the sums due on said contracts in proportion to any acreage in said tracts of land which might be too high for profitable irrigation from said lateral No. 33; that such efforts for settlement failed, and said W. A. West and Mary A. Fitzgerald each did, on the 22d day of March, A. D. 1913, bring an action at law against said American Falls Canal & Power Com-

pany in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power, and sought thereby to recover damages for the loss of trees and crops alleged to have been set out and planted during various seasons prior to that date, and the losses [61] of flumes and ditches alleged to have been constructed upon their said land; said loss by them alleged to be due to the failure of said company properly to construct said lateral No. 33. A copy of the summons and complaint in said action brought by said W. A. West is hereto attached and marked Exhibit "I," and a copy of the summons and complaint in the action brought by Mary A. Fitzgerald is hereto attached and marked Exhibit "J," and both are by this reference thereto made a part of this petition.

XVIII.

That thereafter, on the 13th day of September, A. D. 1913, judgment was entered by said court of the Fifth Judicial District of the State of Idaho, for the County of Power, against said American Falls Canal & Power Company and in favor of said Mary A. Fitzgerald, in the sum of \$2,715.00, with costs; that within the statutory time after the entry of said judgment, said American Falls Canal & Power Company filed a motion for a new trial and the same was pending at the time of the adjudication in Bankruptcy hereinbefore mentioned; and that thereafter, said motion for a new trial was overruled upon default of prosecution by said Bankrupt, and said judgment is listed by said Bankrupt in its schedules in

Bankruptcy, herein on file, as a claim against said bankrupt.

XIX.

That at the March term of the District Court of the Fifth Judicial District of the State of Idaho, for Power County, the action brought by the said W. A. West was pending against said American Falls Canal & Power Company, and after the adjudication of the said company as a bankrupt, and the appointment of said Trustee in Bankruptcy, the said Trustee in Bankruptcy was not made a party and was not substituted as defendant, nor did he in any manner appear; that notwithstanding the premises, by consent of the attorneys of record for the parties in said action, judgment was given and [62] made in favor of the plaintiff and against the American Falls Canal & Power Company, then a bankrupt, for the sum of \$2,715.00, with costs.

XX.

That on and prior to the 6th day of April, A. D. 1914, the said W. A. West and Mary A. Fitzgerald and T. E. Fitzgerald, husband of the said Mary A. Fitzgerald, had notice and full knowledge of the proceedings in bankruptcy herein, the adjudication of the said American Falls Canal & Power Company, as such bankrupt, and the appointment of such Trustee; nevertheless the said parties, claiming that said lateral No. 33 was defective, and that because of said defects, from time to time damages were accruing from loss of crops, said damages being continuing, commenced an action against the American Falls Canal & Power Company in the District Court in and

for Power County, State of Idaho; that in and by said action, the said parties ignored the proceedings in bankruptcy, above referred to, and the appointment of said Trustee, and sought, by their complaint therein, to procure the appointment of a receiver of the assets and effects of said bankrupt, and to enforce in such receivership proceedings the repair and completion of said lateral No. 33, and its construction, as they claimed, and the application of a portion of the moneys accruing due on said contracts and covered by said deed of trust to the People's Bank & Trust Company, for that purpose; that on said 6th day of April, A. D. 1914, the said W. A. West and T. E. Fitzgerald caused summons to be issued and served upon said American Falls Canal & Power Company, and upon the same date, applied to the Court for, and the Court issued an order, requiring the said American Falls Canal & Power Company, to appear, before Alfred Budge, Judge, at American Falls, State of Idaho, on the 11th day of April, A. D. 1914, and show cause, if any it had, why an order should not be made and entered by said Court, appointing a receiver for the purposes hereinbefore set out; that a copy of said complaint, [63] summons and order to show cause is hereto attached and marked Exhibit "K," and by this reference thereto made a part of this petition.

XXI.

That upon receiving a notice of the action mentioned in the next preceding paragraph, your petitioner, as Trustee in Bankruptcy, did forthwith file, in the District Court of the United States, for the

District of Idaho, a petition setting forth that said action had been instituted and praying that the parties involved therein should be required to show cause before the Honorable Frank S. Dietrich, Judge, why they should not be permanently enjoined from instituting a proceeding in any State court of said State of Idaho, against said bankrupt, and from directly or indirectly interfering with the disposition of the assets of said bankrupt, and in the meantime praying for a temporary restraining order, and for other and further relief, as is set forth by said petition, a copy of which is hereto attached and marked Exhibit "L," and by this reference thereto made a part of this petition.

XXII.

That on the said 11th day of April, A. D. 1914, your petitioner, by his attorneys, filed a petition in the said District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power, setting forth in detail the petition in bankruptcy herein, the adjudication by this Court and the appointment of your petitioner as Trustee, and also suggesting the ancillary proceedings hereinbefore referred to, pending before the District Court of the United States for the District of Idaho, and requested the said Court, Honorable Alfred Budge presiding, to stay the proceedings in said action; that notwithstanding said petition and the said application for the stay of said proceeding, the said State Court, on the 13th day of April, A. D. 1914, made and entered an order for the appointment of a receiver, with power to do the things prayed for [64] in said

complaint; that before a receiver qualified or said order had become effective, on the said 13th day of April, A. D. 1914, the United States District Court for the District of Idaho, issued an order requiring the said T. E. Fitzgerald and W. A. West, and their attorneys, to appear before that court on the 17th day of April, A. D. 1914, and show cause why they should not be enjoined from further proceeding in said suit in the State Court, and in the meantime, and before said order could be heard, enjoining the said T. E. Fitzgerald and W. A. West, and their attorneys, from further prosecuting said proceedings in the State court; that on the 17th day of April, A. D. 1914, said order to show cause came on regularly for hearing, and after the introduction of evidence, showing the adjudication of said American Falls Canal & Power Company to be a bankrupt, the reference of said matter to Charles Baldwin, as Referee in Bankruptcy, and the appointment of your petitioner as Trustee, and his qualification as such, the said United States District Court for the District of Idaho made and entered an order, permanently enjoining the further prosecution of said suit in the State court; that in and by said order, so made by the United States District Court for the District of Idaho, the Court directed and provided that proceedings and controversies in respect to the construction of said lateral No. 33 should be carried on and determined by the United States District Court in and for the District of Utah, as a court of bankruptcy, and directed your petitioner to file in said United States District Court for the District of Utah, a petition, suggesting the

situation, and providing for such repairs, alterations and changes as this Court might determine with respect to said lateral No. 33; that a copy of said order is hereto attached, marked Exhibit "M," and by this reference thereto made a part of this petition. And it is pursuant to said order that your petitioner files this petition herein. [65]

XXIII.

Your petitioner further shows that one of the trust deeds above recited, to wit, the trust deed of October 2, A. D. 1905, was executed and recorded prior to the making of the water contracts of the said W. A. West and T. E. Fitzgerald, hereinbefore referred to; that the said W. A. West and T. E. Fitzgerald took the water contracts with full knowledge and notice of said trust deed, and that the said contracts are subsequent and subordinate to the lien of said trust deed; that by the term of said trust deed, it is expressly provided that the trustee should release and satisfy the water rights, shares and interests evidenced by said contracts when and only when full payment of the notes, mortgages, contracts and other evidences of indebtedness had been made. Your petitioner further shows that the second of said trust deeds, to wit, the trust deed of date October first, A. D. 1908, was made under and pursuant to the act of Congress and the amendments thereto, hereinbefore referred to, known as the Carey Act, and by the express terms of said trust deed, the same became and was superior and prior to any claim under said water contracts until the full payment of the amount of said contracts. Your petitioner

further shows that neither the trustee under said trust deeds nor the trustee in bankruptcy herein holds any money applicable to the repair, alteration or extension of the laterals of said canal system, and that the said W. A. West and T. E. Fitzgerald refuse to make any of said repairs themselves, pretending and claiming that under the judgments hereinbefore recited, they have the right to retain and hold all of the moneys due or to become due under their water contracts until the entire amount of said judgments has been paid in full, and that meanwhile they may charge, as against the Bankrupt, the Trustee in said trust deed all accruing damages from loss of crops, by reason of the claimed insufficiency and alleged improper construction of said Lateral No. 33. That in substance and [66] effect the said W. A. West and T. E. Fitzgerald contend that the said lateral No. 33 should be elevated so that a delivery of water could and would be made upon all and every part of the lands referred to in said water deed, and that until, by the elevation of said lateral No. 33 and a delivery of water through the lateral as so changed, the water is placed upon said land, they are not only entitled to refuse to make every payment upon their contracts, but in addition they claim loss of crops, past and prospective, so long as said lateral No. 33 remains in its present condition and situation.

XXIV.

Your petitioner alleges and avers, on information and belief, that the said lateral No. 33 was properly constructed; that the said American Falls Canal &

Power Company has fully performed all of the conditions of the said water contracts on its part to be performed; that the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald, —— have accepted said lateral No. 33 as constructed in full performance of said contract; that neither the trustee for the bondholders under said deeds of trust, nor your petitioner, as such Trustee in bankruptcy, is in possession of said canal and irrigation system, nor has either of said parties any power or authority to change the situation of said lateral No. 33, nor in any way to interfere at all with any part of said canal or irrigation system; that if the said W. A. West, Mary A. Fitzgerald or T. E. Fitzgerald have any claim at all, either under said judgments or by reason of claimed breaches of said water contracts, the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald are in the same class with general creditors and are entitled only to participate in said estate in the same rank with the general creditors, and are not entitled to any preference whatsoever, nor any claim, by setoff or otherwise, in preference and to the prejudice of other creditors.

XXV.

Your petitioner further alleges and avers that the [67] assets of said estate consist wholly of the equity in and the residue of the property covered by said deeds of trust, as hereinbefore set forth, after the payment of said deeds of trust; that the claims of the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald and the alleged defenses to said water contract constitute clouds upon said equity and

seriously impair the marketability and value of said equity; that if the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald have any claims at all, the same claims should be settled and adjudicated at this time in this bankruptcy proceeding, and that in the event the Court shall adjudge and determine that the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald have any claim at all, the equity of your petitioner, as such Trustee in bankruptcy, in and to said water contracts should be sold, and the said property converted into cash and the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald be required to resort to said fund in satisfaction of any claims or offsets which they may have against said equity or said contracts, and that the said equity and said contracts be freed and cleared of all defenses and claims made by the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald.

WHEREFORE, your petitioner having fully set forth facts, respectfully prays the Court:

1. That the Court set this petition for a hearing at a *certain*, and that the Court designate the parties upon whom notice of the hearing of this petition shall be served, and the time and manner of such service.

2. That the Court determine and adjudicate all controversies with respect to the matters in the foregoing petition set forth.

3. That the Court adjudge and decree the claims of the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald wholly invalid and that upon final hearing, the said parties be restrained and enjoined

from making any claim adverse to the rights of your [68] petitioner, as such Trustee in bankruptcy, and from in any manner interfering with the estate of said bankrupt, and that in the meantime and pending such final hearing, the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald be enjoined and restrained from in any manner interfering with the estate of said bankrupt or the possession or administration thereof by your petitioner.

4. That if the Court should determine it proper and within the power of your petitioner, as such Trustee in bankruptcy, so to do, authority be given to your petitioner to reconstruct said lateral No. 33, as suggested in the order made by said United States District Court for the District of Idaho, and for that purpose that the Court determine the nature and extent and the amount of money to be expended for such construction work, and that the Court determine at whose expense and in what manner such work should be done.

5. That in the event the Court shall determine that any of the claims of the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald are defensive to the equity of your petitioner in and to said contracts, or are defenses at all under said contracts, that the equity and right of your petitioner in and to said contracts be converted into cash, that said equity be sold free and clear of all defenses, and that the said W. A. West, Mary A. Fitzgerald and T. E. Fitzgerald be required to resort to the funds so obtained for the satisfaction of said claims.

6. For any other and further relief in the premises as may to the Court seem meet and equitable.

J. D. SKEEN,
L. R. MARTINEAU,
ISAAC BLAIR EVANS,
Solicitors for Petitioner. [69]

State of Utah,
County of Salt Lake,—ss.

Glenn R. Bothwell, being first duly sworn, upon his oath deposes and says: I am the Trustee in bankruptcy of the American Falls Canal & Power Company, a corporation, bankrupt, and the petitioner in the foregoing instrument. I know the contents of said petition, and the same is true of my own knowledge, except as to matters therein alleged upon information and belief, and as to those matters I believe it to be true.

Subscribed and sworn to before me this — day
of —, A. D. 1914.

_____,
Notary Public. [70]

**Exhibit "A" [to Petition for Determination and
Adjudication of Controversies, etc.—Agreement].**

EXHIBIT "A."

**AMERICAN FALLS CANAL & POWER CO.
WARRANTY DEED.**

No. 358.

THIS AGREEMENT, entered into by and between **THE AMERICAN FALLS CANAL & POWER COMPANY**, a corporation (hereinafter

called the Company), party of the first part, and W. A. WEST of American Falls, County of Oneida, State of Idaho (hereinafter called the purchaser), party of the second part:

WITNESSETH: That for and in consideration of the sum of Four Thousand Dollars, to be paid to the PEOPLE'S BANK & TRUST COMPANY, a corporation, at its bank at Rockford, Illinois, as hereinafter specified, and in consideration of the mutual covenants and agreements in this contract contained, to be kept and performed the said parties hereby mutually covenant and agree as follows:

I.

The Company hereby warrants and conveys to the purchaser One Hundred Sixty shares of perpetual water right out of the water appropriated by it from the Snake River in Idaho, to be used during the irrigation season, that is to say, between the 1st day of April and the 1st day of November of each year, and for each and every year hereafter; together with a proportionate interest in the irrigation works, said proportionate interest being based upon the number of shares of water right finally sold in said canal system. Each share of water right shall represent a carrying capacity sufficient to deliver water at the rate of one-eightieth of one second-foot per acre in main canal, and one-fiftieth of one second-foot per acre in all laterals, limiting, however, the maximum amount of water to be furnished to purchaser during any one irrigation season to two and one-half acre-feet. [71]

II.

The Company agrees to carry the water to which the purchaser is entitled under this conveyance through its canal system, and to measure and deliver the same at a point within one-half mile from each legal subdivision of 160 acres.

The shares of water right herein conveyed shall attach to and become appurtenant to the following described land in Blaine County, Idaho, to wit:

The West Half of Southeast Quarter and Lots Two, Three and Four of Section Twenty-five, Township Seven (7) South, Range 30 East, Boise Meridian, containing One Hundred Sixty acres.

(Plat for marking.)

III.

For the purpose of defraying the expense of operating and maintaining said canal system, the Company shall have the right to make an annual charge against the purchaser therefor, which charge shall be made equally and ratably against all of the users of the water from said canal system. But said annual charge shall not be based upon a rate exceeding twenty cents per acre-foot for all water delivered until the full allowance of two and one-half acre-feet shall have been delivered, and the rate shall not exceed fifty cents per acre-foot for all water delivered in excess thereof, but no charge shall be made for any water unless delivered at the request of purchaser, provided, however, that during the first irrigation season that purchaser is able to secure water from said canal system one-fourth of the full allowance of two and one-half acre-feet

of water shall be delivered free of all charge, thereafter the rates above specified shall govern. Said annual charge shall be due and payable on the first day of November of the year for which said charge is made, and the failure of the [72] purchaser to pay said charge within thirty days after the same becomes due shall constitute a default for which the Company may foreclose the rights of the purchaser as provided herein, and the Company shall have the right to suspend the further delivery of water to said purchaser while such default continues.

IV.

The purchaser agrees to pay the Company for said shares of water right, \$25.00 per share in the manner following, to wit:

PAYMENTS.	Date Due.			Principal.		Interest,		Total Amount.	
	Month.	Day.	Year.	Doll.	Cts.	Doll.	Cts.	Doll.	Cts.
Cash	Dec.	8th,	1906	\$480.00					
First Deferred	Dec.	8th,	1907	320.00		\$211.20		\$531.20	
Second Deferred	Dec.	8th,	1908	400.00		192.00		592.00	
Third Deferred	Dec.	8th,	1909	400.00		168.00		568.00	
Fourth Deferred	Dec.	8th,	1910	400.00		144.00		544.00	
Fifth Deferred	Dec.	8th,	1911	400.00		120.00		520.00	
Sixth Deferred	Dec.	8th,	1912	400.00		96.00		496.00	
Seventh Deferred	Dec.	8th,	1913	400.00		72.00		472.00	
Eighth Deferred	Dec.	8th,	1914	400.00		48.00		448.00	
Ninth Deferred	Dec.	8th,	1915	400.00		24.00		424.00	

The first payment is hereby acknowledged. Deferred payments shall bear interest at the rate of six per cent per annum, payable annually. Any deferred payment paid before due shall stop the running of interest thereon.

V.

To secure the payment to the Company of all deferred payments and the interest thereon, and any

charges made to defray the expense of operating and maintaining said canal system as herein provided, said Company shall have and retain a lien on said shares of water right, and on all the right, title and interest of purchaser acquired or hereafter to be acquired in and to the land herein described, which said lien shall be in all respects prior and superior to any and all liens now, or hereafter created, or attempted to be created by said purchaser, and the same shall [73] remain in full force and effect until all the covenants herein made by the purchaser shall have been fully performed.

VI.

In case the purchaser shall fail to make the payments aforesaid, or either of them, or the interest thereon, at the times and upon the terms prescribed, or shall fail to observe and perform any of the conditions or covenants herein contained, the holder hereof may declare all subsequent payments due, and may proceed at law or in equity to foreclose all of the right, title and interest of said purchaser in and to said shares of water right and the land herein described; or the holder hereof may, at his option proceed to sell in accordance with any statutory remedy given by law, said shares of water right and said land in satisfaction of said sums.

VII.

The Company shall devise and make, subject to the approval of the State Engineer and the State Board of Land Commissioners of Idaho, all needful rules and regulations governing the management and distribution of water from said canal system,

not inconsistent with the laws of the United States, the laws of the State of Idaho, and the contract between the State and the Company applicable thereto, which rules and regulations shall provide for the distribution of water to the irrigators in turn or by rotation, as will best protect and serve the interests of all the users of water therein. In case of shortage of water in the Company's canal, through accident, drought or scarcity in any natural stream supplying said canal, or by reason of improper diversion of water by any person, or for any other cause beyond its control, the Company shall not be liable for such shortage nor for any damage caused thereby, nor shall there be by reason thereof, any deduction from any sum herein agreed to be paid by the purchaser. [74]

VIII.

It is understood and agreed by both parties hereto that the PEOPLE'S BANK & TRUST COMPANY, a corporation, with its principal office at Rockford, Illinois, Trustee, is exclusively entitled to receive and acknowledge all payments made upon this contract, and to execute in behalf of the Company receipts and acquittances therefor.

IX.

The purchaser hereby agrees to allow the Company any rights of way through the land herein described which may be needed for the construction of the canal or any lateral. Said rights of way shall be equal to the actual width of said canal or lateral at its base, from toe to toe, together with a strip of land along one side of the canal one hundred feet

in width, and a strip of land along one side of every lateral thirty feet in width, all of which strips of land may be used for an open roadway or other useful purpose.

X.

IT IS FURTHER AGREED, that each and every of the terms and conditions herein expressed shall extend to and be binding upon the successors and assigns of the Company, and upon the heirs, legal representatives, successors or assigns of the purchaser. It is agreed between the parties hereto, that when the said purchaser shall have complied with all the conditions contained herein, and shall have completed all payments as herein provided, then this deed shall give a clear and unincumbered perpetual right to the purchaser for the shares of water herein described, and thereupon the Company agrees to acknowledge the full payment and performance of purchaser, and to satisfy and discharge, in the manner provided by law, the lien herein created.

IN WITNESS WHEREOF, the parties hereto have set their [75] hands and seals in duplicate this 8th day of December, A. D. 1906.

(Signed) AMERICAN FALLS CANAL &
POWER COMPANY.

By F. A. SWEET,
Vice-President.

[Corporate Seal]

J. R. SHRECK,
Secretary.

W. A. WEST,
Purchaser.

Signed, sealed and delivered by said Corporation
in the presence of

NORA M. JONES,
Witnesses.

Copy for State of Idaho.

State of Idaho,
County of Bannock,—ss.

On this 7th day of March, in the year 1907, before
me, Nora M. Jones, a Notary Public in and for the
County of Bannock, State of Idaho, personally ap-
peared J. R. Shreck, known to me to be the Secretary
of the corporation that executed the instrument,
and acknowledged to me that such corporation exe-
cuted the same.

[Notarial Seal]

NORA M. JONES,
Notary Public. [76]

**Exhibit "B" [to Petition for Determination and
Adjudication of Controversies, etc.—Agree-
ment].**

EXHIBIT "B."

**AMERICAN FALLS CANAL & POWER COM-
PANY.**

WARRANTY DEED.

No. 357.

THIS AGREEMENT, entered into be and be-
tween The American Falls Canal & Power Company,
a corporation (hereinafter called the Company),
party of the first part, and T. E. Fitzgerald of Amer-
ican Falls, County of Oneida, State of Idaho (here-
inafter called the purchaser), party of the second
part;

WITNESSETH: That for and in consideration of the sum of Four Thousand Dollars, to be paid People's Bank & Trust Company, a corporation, at its Bank at Rockford, Illinois, as hereinafter specified, and in consideration of the mutual covenants and agreements in this contract contained, to be kept and performed, the said parties hereby mutually covenant and agree as follows, to wit:

I.

The Company hereby warrants and conveys to the purchaser One Hundred Sixty shares of perpetual water right out of the water appropriated by it from the Snake River in Idaho, to be used during the irrigation season, that is to say, between the 1st day of April and the 1st day of November of each year, and for each and every year hereafter; together with a proportionate interest in the irrigation works, said proportionate interest being based upon the number of shares of water right finally sold in said canal system. Each share of water right shall represent a carrying capacity sufficient to deliver water at the rate of one-eightieth of one second-foot per acre in main canal, and one-fiftieth of one second-foot per acre in all laterals, limiting, however, the maximum amount of water to be furnished to purchaser during any one irrigation season to two and one-half acre-feet. [77]

II.

The Company agrees to carry the water to which the purchaser is entitled under this conveyance through its canal system, and to measure and deliver the same at a point within one-half mile from each

legal subdivision of 160 acres.

The shares of water right herein conveyed shall attach to and become appurtenant to the following described land in Blaine County, Idaho, to wit: West Half of Northeast Quarter, Lot 1 of Section Twenty-five, Township Seven, South of Range Thirty East, and Lot Eleven of Section Nineteen, and Lots Six and Seven of Section Thirty, both in Township Seven, South of Range Thirty-one East, B. M., of Section ——— Township ——— South, Range ——— East, Boise Meridian, containing One Hundred Sixty Acres.

III.

For the purpose of defraying the expense of operating and maintaining said canal system, the Company shall have the right to make an annual charge against the purchaser therefor, which charge shall be made equally and ratably against all of the users of the water from said canal system. But said annual charge shall not be based upon a rate exceeding twenty cents per acre-foot for all water delivered until the full allowance of two and one-half acre-feet shall have been delivered, and the rate shall not exceed fifty cents per acre-foot for all water delivered in excess thereof, but no charge shall be made for any water unless delivered at the request of purchaser, provided, however, that during the first irrigation season that purchaser is able to secure water from said canal system one-fourth of the full allowance of two and one-half acre-feet of water shall be delivered free of all charge, thereafter the rates above specified shall govern. Said annual charge

shall be due and payable on the first day of November of the year for which said charge is made, and the failure of the purchaser to pay said charge within thirty days after the [78] same becomes due, shall constitute a default for which the Company may foreclose the rights of the purchaser as provided herein, and the Company shall have the right to suspend further delivery of water to said purchaser while such default continues.

IV.

The purchaser agrees to pay the Company for said shares of water right, \$25.00 per share in the manner following, to wit:

PAYMENTS.	Date Due.			Principal.		Interest,		Tot. Amount.		Remarks.
	Month.	Day.	Year.	Doll.	¢	Doll.	¢	Doll.	¢	
Cash	Dec.	8th,	1906	\$480.00						Dec. 20
First Deferred	Dec.	8th,	1907	320.00		\$211.20		531.20		1909, pd.
Second Deferred	Dec.	8th,	1908	400.00		192.00		592.00		\$531.20 in
Third Deferred	Dec.	8th,	1909	400.00		168.00		568.00		full for 1st
Fourth Deferred	Dec.	8th,	1910	400.00		144.00		544.00		default. Jan.
Fifth Deferred	Dec.	8th,	1911	400.00		120.00		520.00		4th, 1911,
Sixth Deferred	Dec.	8th,	1912	400.00		96.00		496.00		paid
Seventh Deferred	Dec.	8th,	1913	400.00		72.00		472.00		\$627.52.
Eighth Deferred	Dec.	8th,	1914	400.00		48.00		448.00		
Ninth Deferred	Dec.	8th,	1915	400.00		24.00		424.00		

The first payment is hereby acknowledged. Deferred payments shall bear interest at the rate of six per cent per annum, payable annually, from date until maturity, and thereafter the interest shall be ten per cent per annum, payable annually. Any deferred payment paid before due shall stop the running of interest thereon.

V.

To secure the payment to the Company of all deferred payments and the interest thereon, and any charges made to defray the expense of operating and maintaining said canal system as herein provided,

said Company shall have and retain a lien on said shares of water right, and on all the right, title and interest of purchaser acquired or hereafter to be acquired in and to the land herein described, which said lien shall be in all respects prior and superior to any and all liens now, or hereafter created, or attempted to be created by said purchaser, and the same shall remain in full force and effect until all the covenants herein made by the purchaser shall have been fully performed. [79]

VI.

In case the purchaser shall fail to make the payments aforesaid, or either of them, or the interest thereon, at the time and upon the terms prescribed, or shall fail to observe and perform any of the conditions or covenants herein contained, the holder hereof may declare all subsequent payments due, and may proceed at law or in equity to foreclose all of the right, title and interest of said purchaser in and to said shares of water right and the land herein described; or the holder hereof, may at his option proceed to sell in accordance with any statutory remedy given by law, said shares of water right and said land in satisfaction of said sums.

VII.

The Company shall devise and make, subject to the approval of the State Engineer and the State Board of Land Commissioners of Idaho, all needful rules and regulations governing the management and distribution of water from said canal system, not inconsistent with the laws of the United States, the laws of the State of Idaho, and the contract between

the State and the Company applicable thereto, which rules and regulations shall provide for the distribution of water to the irrigators in turn or by rotation as will best protect and serve the interests of all the users of water therein. In case of shortage of water in the Company's canal, through accident, drought or scarcity of water in any natural stream supplying said canal, or by reason of improper diversion of water by any person, or for any other cause beyond its control, the Company shall not be liable for such shortage nor for any damage caused thereby, nor shall there be, by reason thereof, any deduction from any sum herein agreed to be paid by the purchaser.

VIII.

It is understood and agreed by both parties hereto that the People's Bank & Trust Company, a corporation, with its principal office at Rockford, Illinois, Trustee, is exclusively entitled to [80] receive and acknowledge all payments made upon this contract, and to execute in behalf of the Company receipts and acquittances therefor.

IX.

The purchaser hereby agrees to allow the Company any rights of way through the land herein described which may be needed for the construction of the canal or any lateral. Said rights of way shall be equal to the actual width of said canal or lateral at its base, from toe to toe, together with a strip of land along one side of the canal one hundred feet in width, and a strip of land along one side of every lateral thirty feet in width, all of which strips of land may be used for an open roadway

or other useful purpose.

X.

IT IS FURTHER AGREED, that each and every of the terms and conditions herein expressed shall extend to and be binding upon the successors and assigns of the Company, and upon the heirs, legal representatives, successors or assigns of the purchaser. It is agreed between the parties hereto, that when the said purchaser shall have complied with all the conditions contained herein, and shall have completed all payments as herein provided, then this deed shall give a clear and unincumbered perpetual right to the purchaser for the shares of water herein described, and thereupon the Company agrees to acknowledge the full payment and performance of purchaser, and to satisfy and discharge, in the manner provided by law, the lien herein created. [81]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in duplicate this 8th day of December, A. D. 1906.

AMERICAN FALLS CANAL & POWER CO.

By F. A. SWEET,

Vice-President.

[Seal]

J. R. SHRECK,

Secretary.

T. E. FITZGERALD,

Purchaser.

Signed, sealed and delivered by said corporation in the presence of

NORA M. JONES,

Witnesses.

State of Idaho,
County of Bannock,—ss.

On this 4th day of March, in the year 1907, before me, Nora M. Jones, a Notary Public in and for the County of Bannock, State of Idaho, personally appeared J. R. Shreck, known to me to be the Secretary of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

[Seal]

NORA M. JONES,
Notary Public. [82]

Exhibit "C" [to Petition for Determination and Adjudication of Controversies, etc.—Letter, November 28, 1910, American Falls Co. to Board of Land Commissioners].

EXHIBIT "C."

GENERAL OFFICE:

AMERICAN FALLS CANAL & POWER
COMPANY.

Aberdeen, Idaho, November 28, 1910.

Hon. Board of Land Commissioners,
Boise, Idaho.

Gentlemen:—

In accordance with the provisions contained in Section 12 of a certain contract between the State of Idaho, as the party of the first part, and the American Falls Canal & Power Company as the party of the second part, dated February 23, 1901, the said party of the second part elects to transfer the control and management of said canal system to the owners and holders of water rights thereunder, as

therein provided, reserving the right to sell balance of unsold water rights.

The party of the second part desires to submit to your honorable body at this time, that the provisions of the aforesaid contract have been complied with, canals and laterals constructed and lands in Idaho segregated lists Nos. 1 and 2 and 1 and 24, have been properly reclaimed; that on June 13, 1910, a meeting of the water users under the system of the American Falls Canal & Power Company was held at Aberdeen, Idaho, at which time a corporation was formed and articles adopted, said corporation to be known as the Aberdeen-Springfield Canal Company, said company appointing at said meeting a committee consisting of Arthur J. Snyder, Paul A. Fugate and F. A. Sweet, to act in connection with D. H. Blossom and the State Engineer, in making an examination of the system and report at a future meeting.

The said examination was made and a report submitted at a meeting of the stockholders of the Aberdeen-Springfield Canal Company, held at Aberdeen, Idaho, October 15, 1910, at which [83] meeting 30,215 shares out of a possible 44,000 shares were represented; that said report was adopted by a vote of 27,500 shares and a resolution adopted to the effect that the Aberdeen-Springfield Canal Company accept the canal subject to the report of the committee, only 120 shares voting against, a copy of said report and resolution being attached hereto, as well as a copy of a resolution passed by the Board of Directors of the said Aberdeen-Springfield Canal

Company November 26, 1910, requesting your honorable body to formally accept the system, as now completed and transfer the control and management to said corporation.

That at the present time 51,831.42 shares of water rights have been sold and 44,948.05 shares of stock have been accepted in the Aberdeen-Springfield Canal Company.

We, therefore, respectfully request that the proper action be taken by your honorable body to relieve the American Falls Canal & Power Company, the party of the second part in first-mentioned contract, from any further obligation, as regards canal construction and reclamation of the land, and that their bond for the proper fulfillment of this contract, now on file with the State, be released and that the Aberdeen-Springfield Canal Company be notified of such action. Your prompt and immediate action in this matter will be greatly appreciated by the undersigned.

AMERICAN FALLS CANAL & POWER CO.

By GLENN R. BOTHWELL,

President. [84]

State of Idaho,

County of Ada,—ss.

I, N. Jenness, Register of the State Board of Land Commissioners of the State of Idaho, do hereby certify that the foregoing is a full, true and correct copy of correspondence from the American Falls Canal & Power Company, dated November 28, 1910, as is on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of the State Board of Land Commissioners this fifth day of August, 1913.

[Seal]

N. JENNESS,
Register. [85]

**Exhibit "D" [to Petition for Determination and
Adjudication of Controversies, etc.—Report].**

EXHIBIT "D."

Aberdeen, Idaho, September 21, 1910.

We, your committee appointed to go over and inspect the American Falls Canal & Power Company's irrigation system in company with the State Engineer of Idaho and D. H. Blossom, General Manager of the American Falls Canal & Power Company, in order to ascertain what remains to be done to complete said canal system in a satisfactory manner for turning over to the water users or their legal representative, the Aberdeen and Springfield Canal Company report, as follows:

1.

That the American Falls Canal & Power Company raise and widen that portion of the canal bank on the east side of the canal between the river head-gate and the first wasteway, said bank being just above the wasteway and the part needing such repairs being for a distance of about five hundred feet.

2.

That said American Falls Canal & Power Company should deepen and widen the canal between stations 226 and 258, which will necessitate the removal of about 12,000 cubic yards of gravel.

3.

The bents or supports under Lava Slide Canal Company's flume should be taken out and reconstructed in such a manner as to minimize the obstruction of water in the American Falls Canal.

4.

That a new crossing be constructed at the point where the American Falls Canal crosses over the People's canal the second time; that said crossing be of concrete or cement and stone, or both, and that the same be upon the principle of an inverted siphon.
[86]

5.

That the south bank of the canal be repaired and reconstructed at all points where necessary, between the third crossing of the People's canal with the American Falls Canal and a point below, opposite the place where the People's canal leaves the American Falls Canal.

6.

That the rock obstruction in the canal in Watt's field be removed.

7.

That the grade in Watt's basin lateral be made uniform by leaving main canal at present elevation and giving said lateral a fall of .75 per 5,000 feet.

8.

That Springfield townsite lateral No. 2 be completed at the upper end to correspond with the balance of said lateral.

9.

That Springfield townsite lateral No. 1 just above

the Stowell Fill be enlarged to correspond to the carrying capacity of the balance of the lateral below that point.

10.

That the south side of the Hilton Fill be raised, if found too low, so its carrying capacity be equal to that of the canal immediately below that point.

11.

That the Rabbit brush flat lateral for a short distance below the headgate be repaired and raised if necessary.

12.

That check-gate near Amzi Schreck's place be replaced in a substantial and satisfactory manner.

13.

That a corrugated iron tile 24" in diameter be placed for drainage near Jacob Deuels place.

(Signed.) ARTHUR J. SNYDER.

“ PAUL A. FUGATE.

“ F. A. SWEET. [87]

Exhibit “E” [to Petition for Determination and Adjudication of Controversies, etc.—Resolution].

EXHIBIT “E.”

**ABERDEEN SPRINGFIELD CANAL CO.,
ABERDEEN, IDAHO.**

WHEREAS, a large portion of the work of completing the canal system in accordance with the report of the examining committee adopted at a meeting of the stockholders of the Aberdeen-Springfield Canal Company held October 15th, 1910, has been completed, and,

WHEREAS, the balance of the work is progressing satisfactorily and the American Falls Canal & Power Company have furnished a bond in the amount of Ten Thousand Dollars, said bond being satisfactory to the Board of Directors of the Aberdeen-Springfield Canal Company for the full completion of the work specified in above mentioned report on or before April 1, 1911.

THEREFORE, BE IT RESOLVED that we hereby request the State Board of Land Commissioners for the State of Idaho to accept the canal system as completed and formally designate the Aberdeen-Springfield Canal Company as the legal owners of said system.

We hereby certify that the above resolution was adopted at a regular meeting of the Board of Directors of the Aberdeen-Springfield Canal Co., held at Aberdeen, Idaho, Nov. 16th, 1910.

ARTHUR J. SNYDER,
Pres.

NORA M. JONES,
Secty.

Rec'd and filed, November 20, 1910.

N. JENNESS,
Register. [88]

Exhibit "F" [to Petition for Determination and Adjudication of Controversies, etc.—Letter, December 2, 1910, State Engineer to State Board of Land Commissioners].

EXHIBIT "F."

STATE OF IDAHO.

Engineering Department.

Boise.

Dec. 2, 1910.

State Board of Land Commissioners,
State Capitol Building,
Boise, Idaho.

Gentlemen:—

In the matter of the petition of the American Falls Canal & Power Company, and of the Springfield-Aberdeen Canal Company, relative to turning over the canal system known as the American Falls Project, I beg leave to state that from the 18th to the 21st of September, in company with Mr. D. H. Blossom, General Manager of the American Falls Canal & Power Company, and the committee of three appointed by the Settlers Associations to inspect the canal system with reference to its completion, I inspected the above-mentioned system and also advised the committees in regard to certain matters pertaining to the turning over of the works to the settlers, and the committee found the system to be incomplete in thirteen particulars; all of which are recited at length in the above-mentioned petition. With the matters contained in the report taken care of, I believe the system to be reasonably well constructed, and that

the American Falls Canal & Power Company should be relieved of further responsibility in so far as construction matters are concerned. I fully agree with the report of the committee, and if it is the desire of the settlers, as set out in the petition, to accept the canal as constructed, permission on the part of the Board, if such is necessary, should not be withheld. However, if it is proper, I would recommend that these people take the necessary steps to organize themselves into an Irrigation District, under our irrigation district laws, at as [89] early a date as convenient, for the reason that under such an arrangement the necessities of the district can be better and more readily taken care of.

Respectfully submitted,

(Signed) D. G. MARTIN,

State Engineer.

State of Idaho,

County of Ada,—ss.

I, N. Jenness, Register of the State Board of Land Commissioners of the State of Idaho, do hereby certify that the foregoing is a full, true and correct copy of a report of the State Engineer, dated December 2, 1910, as is on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of the State Board of Land Commissioners this eighth day of August, 1913.

[Seal]

N. JENNESS,

Register, [90]

Exhibit "G" [to Petition for Determination and Adjudication of Controversies, etc.—Extract from Minutes].

EXHIBIT "G."

**EXTRACT FROM MINUTES OF A MEETING
OF THE STATE BOARD OF LAND COM-
MISSIONERS, HELD DECEMBER 1, 1910.**

In the matter of the application of the Aberdeen-Springfield Canal Company, and the American Falls Canal & Power Company, asking that the canal system, constructed by the American Falls Canal & Power Company be turned over to the Aberdeen-Springfield Canal Company, a corporation organized by the settlers upon the American Falls Carey project, the following resolution was unanimously adopted:

It appearing to the Board that the Settlers Company have by a resolution, appointed its committee to make an examination of the condition of its canals and specified wherein the same was defective, and it further appearing that the said construction company have satisfied and complied with the requirements of said committee in that respect, and that the settlers in the main, under said project, are now desirous of taking over the management and control of the said canal system, and that the said stockholders of said corporation have voted to take over the control and operation of said system, and the Board now being advised in the premises, it is hereby ordered that upon the filing of a report of the State Engineer, agreeing with the report of said committee

as to the condition of the canal system, that the canal system be transferred from the said construction company to the said operating company for control and operation.

The intention of the within transfer is in no way to alter or change the original terms of the contract between the State of Idaho and the American Falls Canal & Power Company, except as to *construction completion* of the canal and operation of [91] same and must be understood to in no way relieve the American Falls Canal & Power Company from any other obligations provided in said original contract, and the laws of the State.

And it appearing to the Board and the said construction company has executed to each of the settlers under said contract, a warranty deed for water right, and a proportionate interest in the canal system, it is especially understood that this resolution does not attempt to construe the rights of the settlers under said deed, nor limit or modify in any respect the liability of the said construction company or the rights of the settlers thereunder.

State of Idaho,
County of Ada,—ss.

I, N. Jenness, Register of the State Board of Land Commissioners of the State of Idaho, do hereby certify that the foregoing is a full, true and correct copy of an extract from the minutes of the State Board of Land Commissioners dated December 1, 1910, as is on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of the State Board of Land

Commissioners this fifth day of August, 1913.

[Seal]

N. JENNESS,
Register. [92]

**Exhibit "H" [to Petition for Determination and
Adjudication of Controversies, etc.—Agreement
to Accept Certain Payments, etc.].**

EXHIBIT "H."

Salt Lake City, Utah, Nov. 9, 1909.

The American Falls Canal & Power Company hereby agrees to accept, from Mrs. T. E. Fitzgerald the following payments in full settlement of all payments called for on her contract to purchase water right:

Payment	on	Contract	due	Dec. 1907—Payable	Dec. 1909.....	\$531.20
"	"	"	"	" 1908	" " 1910.....	627.52
"	"	"	"	" 1909	" " 1911.....	602.08
"	"	"	"	" 1910	" " 1912.....	576.44
"	"	"	"	" 1911	" " 1913.....	551.20
"	"	"	"	" 1912	" " 1914.....	525.76
"	"	"	"	" 1913	" " 1915.....	500.32
"	"	"	"	" 1914	" " 1916.....	474.88
"	"	"	"	" 1915	" " 1917.....	449.44

This extension is made on account of Mrs. T. E. Fitzgerald releasing the Company from any and all claims for damage arising from any failure on their part to perform any of the conditions of the above mentioned contract, to this date.

**AMERICAN FALLS CANAL & POWER
COMPANY.**

By G. R. BOTHWELL,
President.

I accept above and agree to make payments as above provided, together with interest if not paid

when due, from maturity.

Mrs. T. E. FITZGERALD,

Per T. E. FITZGERALD,

Her Attorney-in-Fact. [93]

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of
Power.*

W. A. WEST,

Plaintiff,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,

Defendant.

**Summons [in State Court in West vs. American
Falls Co.].**

THE STATE OF IDAHO Sends Greeting to the
Above-named Defendant.

YOU ARE HEREBY REQUIRED TO AP-
PEAR in an action brought against you by the
above-named plaintiff in the District Court of the
Fifth Judicial District, State of Idaho, in and for the
County of Power, and to answer the complaint filed
therein (a copy of which is hereto attached) within
twenty days (exclusive of the day of service) after
the service on you of this summons, if served within
this district; or if served out of this district, within
forty days.

AND YOU ARE HEREBY NOTIFIED, That if
you fail to appear and answer the said complaint, as
above required, the said plaintiff will apply to the
Court for the relief demanded in said complaint.

GIVEN under my hand and the seal of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power, this 22d day of March, in the year of our Lord one thousand nine hundred and thirteen.

[District Court Seal] DAVIS BURRELL,
Clerk.

GARLAND DRAPER,
SULLIVAN & SULLIVAN,
Attys. for Plaintiff,
Res. Boise, Idaho. [94]

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Power County.*

W. A. WEST,
Plaintiff,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,
Defendant.

**Complaint [in State Court in West vs. American
Falls Co.].**

The plaintiff complains of the defendant and for a cause of action herein alleges:

I.

That the defendant is now, and during all of the times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Utah, and doing business in the State of Idaho, with its principal place of business therein in Bingham County, Idaho.

II.

That in the month of January, 1906, said plaintiff

made entry under the homestead laws of the United States of the following described tract of land:

The west half of the southeast quarter and Lots Two, Three and Four of Section 25, Township 7 South, Range 30 E., B. M., containing 170 acres, more or less, in Blaine County, now Power County, Idaho. That he is now and has at all times mentioned herein since said day been duly seized and in possession and entitled to the possession of said premises and the whole thereof, and his title thereto was perfected by a full compliance with the laws of the United States and the rules and regulations of the General Land Office of the United States pertaining to entries of Homestead, and that during the summer of 1912 patent issued by the United States of [95] America, giving and granting him absolute title to said tract of land.

III.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00, to be paid in ten installments, the receipt of the first of which, a cash payment of \$480.00, being thereby acknowledged, the said American Falls Canal & Power Company made, executed and delivered to said plaintiff its certain warranty deed in writing, a copy of which is hereto attached, marked Exhibit "A" and by this reference made a part hereof.

IV.

That immediately prior to the planting of the crops and trees in each of the years 1907, 1908, 1909 and 1910, as more particularly hereinafter set forth, and prior to the opening of the irrigation season of

each of said years said defendant notified this plaintiff that water would be ready for delivery through its irrigation works for use on said land, in accordance with the terms of said Water Deed, in amounts sufficient for the proper irrigation of said crops and trees during the irrigation season of each of said years; that said defendant company intended and expected that plaintiff would rely upon said notices and be induced thereby to believe that water would be ready for use on his said land and that said company would comply with its said contracts and furnish and deliver the same.

V.

That the plaintiff, believing that the defendant would be ready to deliver water during the irrigation season of each of said years 1908, 1909 and 1910, in accordance with said water deed and the notices as aforesaid, and that he would be able to secure same for the proper irrigation of said tract of land, and fully expecting that said defendant company would furnish, deliver, carry and make available, ample water for the irrigation of his said lands for said crops during said seasons, and relying upon the provisions of said Water Deed and upon the notices aforesaid, he was induced [96] thereby, and did in the year 1908, construct ditches and flumes, leading to and over said lands for the distribution of said water thereon, and thereover, and did during proper planting seasons, as hereafter in this paragraph more particularly set forth, and with the full knowledge, consent and acquiescence of said defendant, plant, seed and set the following crops and trees,

after breaking and preparing the part of said land used therefor, to wit:

- (a) In the Fall of 1907, 80 acres of said land in wheat;
- (b) In the Spring of 1908, ten acres of said land in barley;
- (c) In the Fall of 1908, eighty acres of said land in wheat;
- (d) In the Fall of 1909, eighty acres of said land in wheat;
- (e) In the Spring of 1910, eleven acres of said land in alfalfa;
- (f) In the Spring of 1910, two hundred trees for shade and other purposes over said land.

VI.

That prior to the opening of the irrigation season of 1908 said plaintiff constructed the necessary laterals, ditches, flumes, and gates leading from the point at which he was to connect with the said defendant company's irrigation system to and over said land for taking and distributing water thereon, and said plaintiff was ready, willing and fully prepared, and said ditches were properly located, constructed and of sufficient capacity, to receive and distribute the water conveyed under said Water Deed, upon said land and crop during the irrigation season of 1908 and continuously thereafter.

VII.

That notwithstanding said Water Deed and the obligations assumed by, and devolving upon said defendant company thereunder and notwithstanding said notices and promises to furnish, carry and

deliver ample water for the proper irrigation of said land during said years, under its said Water Deed, and although there was plenty of water available at the place of diversion, and notwithstanding the [97] fact that said plaintiff had duly and fully performed all the obligations and conditions of said Water Deed to be by said plaintiff performed, said defendant company, with full knowledge of the fact that said plaintiff had relied upon said Water Deed, notices and obligations to furnish water, as aforesaid, and had constructed laterals and ditches to be constructed to and over said land at great expense, and had planted, seeded and set the crops and trees, as aforesaid, and well knowing that the said ditches and flumes would be useless and the sums expended thereon lost to said plaintiff, and that the said crops and trees could not live and thrive unless water was made available for their irrigation from its said canal system, utterly failed, neglected and refused to furnish, carry or deliver, or make available for plaintiff's use, ample water, or any water, for the proper irrigation of said land or the crops and trees planted and growing thereon during said years, as agreed in said Water Deed, and also by said notices, aforesaid, or in any manner at all; and utterly failed, neglected and refused to furnish, any water to be used upon said land or any part thereof, during the irrigation season, that is to say, between the 1st day of April and the 1st day of November of each and every year after the year 1906, and to furnish canals and laterals of a carrying capacity sufficient to deliver water at the rate of $1/80$ of one second-foot

per acre in main canal, and $1/50$ of one second-foot per acre, or any water, in the laterals from which said plaintiff was to take water for the irrigation of said land; and utterly failed, neglected and refused, as required by said Water Deed, to carry the amount of water, or any amount of water, to which said plaintiff was and is entitled thereunder for use on said land, through said defendant's canal system and measure and deliver the same at a point within one-half mile of said land where *at* water would be available for distribution and use thereon, but, on the contrary, said defendant carried and delivered some water, not sufficient however to properly irrigate said land, [98] to a point, within one-half of said land but said point was of too low an elevation to allow water to be made available therefrom for distribution or use upon said land, or any part thereof, thus making all of the canal system of said defendant under and below all of said land so as to make it impossible to secure water therefrom at any point within and in accordance with the notices given said plaintiff as aforesaid, said trees would have continued to live and thrive and the yield from said crops would have been as great at least as is usually received from such land well cultivated and supplied with water for irrigation purposes under ordinarily favorably conditions; that upon the failure of said company to supply water as aforesaid, said plaintiff endeavored at various times to preserve and prevent the destruction of said trees and to secure the greatest possible yield from said crops and prevent their absolute waste and destruction, by hauling water for

use in the irrigation thereof from a neighboring stream at a great trouble and expense to himself; and in spite of the use of said water upon said crop and trees and notwithstanding the close care and attention given said crops and trees and the use of said plaintiff's best husbandry and endeavors to secure a sufficient yield therefrom and to preserve and promote the growth thereof, and solely by reason of the failure of defendant to deliver water therefor, as hereinbefore stated, and to do and perform its aforesaid obligations, agreements and duties, the ditches and flumes constructed by said plaintiff as aforesaid, were damaged and destroyed and became useless and valueless to said plaintiff and said crops and trees and the whole thereof were either entirely destroyed and lost to said plaintiff or partially destroyed, injured, stunted and cut short in their growth and yield and failed to mature, as hereinafter more fully appears.

IX.

That the damages occurring to said plaintiff and caused by the foregoing acts of defendant and the breaches aforesaid of the terms and conditions of said Water Deed and notices are as follows: [99]

(a) That said crop of wheat planted in the Fall of 1907, as aforesaid, was injured, stunted and cut short in its growth and failed to mature, all to the damage of said plaintiff in the sum of \$450.00;

(b) That said crop of barley planted in the Spring of 1908, as aforesaid, was injured, stunted and cut short in its growth and failed to mature, all to the damage of said plaintiff in the sum of \$200.00;

(c) That said crop of wheat planted in the Fall of 1908, as aforesaid, was injured, stunted and cut short in its growth and failed to mature, all *the* the damage of said plaintiff in the sum of \$650.00;

(d) That said crop of wheat planted in the Fall of 1909, as aforesaid, was injured, stunted and cut short in its growth and failed to mature, all to the damage of said plaintiff in the sum of \$650.00;

(e) That said crop of alfalfa planted in the Spring of 1910, as aforesaid, was injured, stunted and cut short in its growth and failed to mature, all to the damage of said plaintiff in the sum of \$274.00;

(f) That said 200 shade trees put out and set upon said land in the Spring of 1910, as aforesaid, were totally destroyed and lost to this plaintiff to his damage in the sum of \$275.00;

(g) That said ditches and flumes constructed by plaintiff as aforesaid, were destroyed and made useless and valueless to plaintiff to his damage in the sum of \$500.00.

X.

That plaintiff's said boundary of land and all of the same lies under the canals, laterals, etc., making up the irrigation system aforesaid, and is now and has been during all the times, mentioned herein susceptible of irrigation from said system; that said tract of land is dry and arid in character and requires the artificial use of water thereon before crops of any kind can be successfully raised; that there is no water of any kind available or obtainable on or near said tract of land which can be utilized for irrigation, [100] cultivation, reclamation or other pur-

poses on said land, other than through said irrigation works, nor has there been during any of the times mentioned herein, all of which said defendant company at all times well knew.

XI.

That at all times herein mentioned said plaintiff has fully and faithfully performed each and every condition and obligation by him to be performed under said Water Deed or otherwise due to said company from said plaintiff in regard to the land and water rights herein mentioned, and he is ready, able and willing to perform each and every condition and obligation to be by him performed thereunder hereafter.

XII.

That at all times herein mentioned for which damage is sought for failure to carry out its said contracts the defendant company was in the possession, ownership and control of the said irrigation works and all thereof.

XIII.

That plaintiff has demanded of defendant, at divers times that said sums of damages be paid, but said defendant refused to pay the same, or any part thereof, and still refuses so to do and there is due the plaintiff from the defendant said sum of \$450.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st, 1908; and the said sum of \$200.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st, 1908; and the said sum of \$650.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st,

1909; and the said sum of \$650.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st, 1910; and the said sum of \$274.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st, 1910; and the said sum of \$275.00, with interest thereon at the rate of seven per [101] cent per annum from Oct. 1st, 1910; and the said sum of \$500.00, with interest thereon at the rate of seven per cent per annum from Oct. 1st, 1908.

WHEREFORE, plaintiff demands judgment against said defendant for the said sums of \$450.00, \$200.00, \$650.00, \$650.00, \$274.00, \$275.00, and \$500.00, or the aggregate sum of \$2,999.00, together with the interest due upon the respective sums making up said \$2,999.00 aggregate from the dates and at the rate specified in paragraph XIII hereof; for his costs of suit, and such other and further relief as may be just and equitable in the premises.

GARLAND DRAPER,
SULLIVAN & SULLIVAN,
All Residing at Boise, Idaho,
Attorneys for Plaintiff.

State of Idaho,
County of Ada,—ss.

W. E. Sullivan, being first duly sworn, on oath says: That he is one of the attorneys of the plaintiff in the above-entitled cause and of the plaintiff named in the foregoing complaint; that he has read the same and knows the contents thereof and believes the facts therein stated to be true, and affiant further says that said plaintiff is absent from the

county where his attorneys reside, and for that reason the complaint herein is not verified by said plaintiff, but by one of his said attorneys.

W. E. SULLIVAN.

Subscribed and sworn to before me this 11th day of March, 1913.

[Seal]

HARRY C. WYMAN,
Notary Public. [102]

**Exhibit "J" [Summons in State Court in Fitzgerald
vs. American Falls Co., etc.].**

EXHIBIT "J."

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of
Power.*

MARY A. FITZGERALD,

Plaintiff,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,

Defendant.

THE STATE OF IDAHO Sends Greeting to the
Above-named Defendant.

YOU ARE HEREBY REQUIRED TO AP-
PEAR in an action brought against you by the
above-named plaintiff in the District Court of the
Fifth Judicial District, State of Idaho, in and for
the County of Power, and to answer the complaint
filed therein (a copy of which is hereto attached)
within twenty days (exclusive of the day of service)

after the service on you of this summons, if served within this district; or if served out of this district, within forty days.

AND YOU ARE HEREBY NOTIFIED, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief demanded in said complaint.

GIVEN under my hand and the seal of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power this 22d day of March, in the year of our Lord one thousand nine hundred and thirteen.

[District Court Seal] DAVID BURRELL,
Clerk.

GARLAND DRAPER,
SULLIVAN & SULLIVAN,
Attys. for Plaintiff,
Res. Boise, Idaho. [103]

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Power County.*

MARY A. FITZGERALD,
Plaintiff,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,
Defendant.

**Complaint [in State Court in Fitzgerald vs. Ameri-
can Falls Co.].**

The plaintiff complains of the defendant and for cause of action alleges:

I.

That the defendant is now, and during all the times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Utah, and doing business in the State of Idaho, with its principal place of business therein in Bingham County, Idaho.

II.

That on April —, 1906, one E. J. Toumy made entry, under the Desert Land laws of the United States, of the following described tract of land, to wit:

W.1/2 of the NE.1/4, and Lot 1, Sec. 25, Twp. 7 S., R. 30 E., and Lot 11 of Sec. 19, and Lots 6 and 7 of Sec. 30, both in Twp. 7 S., R. 31 E., B. M., Blaine County, Idaho, now Power County.

That in August, 1906, said Toumy duly assigned all his right, title and interest in and to said premises to said plaintiff, and she became the lawful possessor and owner of said premises in accordance with the provisions of said Desert Land Law and has been during all the times mentioned herein in possession and entitled to the possession thereof; that in June, 1912, patent to said premises and the whole thereof from the United States of America was executed and delivered to said plaintiff. [104]

III.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00, to be paid in ten installments, the receipt of the first of which, a cash payment of \$480.00, being thereby acknowledged, the said American Falls Canal & Power Com-

pany made, executed and delivered to T. E. Fitzgerald its certain warranty deed in writing, a copy of which is hereto attached, marked Exhibit "A" and by this reference made a part hereof, which deed was on Sept. 3, 1907, duly assigned to this plaintiff, who, during all times mentioned herein, was the owner and holder thereof.

IV.

That immediately prior to the planting of the crops and trees in each of the years 1909, 1910, and 1911 and 1912, as more particularly hereinafter set forth, and prior to the opening of the irrigation season of each of said years, said defendant notified this plaintiff that water would be ready for delivery through its irrigation works for use on said land, in accordance with the terms of said Water Deed, in amounts sufficient for the proper irrigation of said crops and trees during the irrigation season of each of said years. That said defendant company intended and expected that plaintiff would rely upon said notices and be induced thereby to believe that the water would be ready for use on her said land, and that said company would comply with its said contracts and furnish and deliver the same.

V.

That the plaintiff, believing that the defendant would be ready to deliver water during the irrigation season of each of said years 1909, 1910, 1911 and 1912, in accordance with said Water Deed and the notices as aforesaid, and that she would be able to secure same for the proper irrigation of said tract of land,

and fully expecting said defendant company would furnish, deliver, carry and make available ample water for the irrigation of her said lands [105] for said crops during said seasons, and relying upon the provisions of said Water Deed and upon the notices aforesaid, she was induced thereby, and did in the year 1908 construct ditches and flumes, leading to and over said lands for the distribution of said water thereon and thereover, and did during proper planting seasons, as hereafter in this paragraph and more particularly set forth, and with the full knowledge and acquiescence of said defendant, after breaking and preparing the part of said land used therefor, plant, seed and set the following crops and trees, to wit:

(a) In the spring of 1909, 306 fruit trees on six acres of said land, consisting of apple, plum, cherry and pear trees;

(b) In the fall of 1909, 71 acres of said land in wheat;

(c) In the summer of 1909, 1 acre in vegetables and garden stuff;

(d) In the spring of 1910, 100 shade trees over said land;

(e) In the spring of 1910, 16 acres of said land in oats;

(f) In the spring of 1911, 11 acres of said land in oats;

(g) In the spring of 1912, 10 acres of said land in potatoes.

VI.

That prior to the opening of the irrigation sea-

son of 1908 said plaintiff constructed the necessary laterals, ditches, flumes and gates leading from the point at which she was to connect with the said defendant company's irrigation system to and over said land for taking and distributing water thereon, and said plaintiff was ready, willing and fully prepared, and said ditches were properly located, constructed and of sufficient capacity, to receive and distribute the water conveyed under said Water Deed, upon said land and crop during the irrigation season of 1908 and continuously thereafter.

VII.

That notwithstanding said Water Deed and the obligations assumed by and devolving upon said defendant company thereunder, [106] and notwithstanding said notices and promises to furnish, carry and deliver ample water for the proper irrigation of said land during said years, under its said Water Deed, and although there was plenty of water available at the place of diversion, and notwithstanding the fact that said plaintiff had duly and fully performed all the obligations and conditions of said Water Deed to be by said plaintiff performed, said defendant company, with full knowledge of the fact that said plaintiff had relied upon said Water Deed, notices and obligations to furnish water, as aforesaid, and had constructed laterals and ditches to be constructed to and over said land at great expense, and had planted, seeded and set the crops and trees, as aforesaid, and well knowing that the said ditches and flumes would be useless and the sums expended thereon lost to said plain-

tiff, and that the said crops and trees could not live and thrive unless water was made available for their irrigation from its said canal system, utterly failed, neglected and refused to furnish, carry or deliver, or make available for plaintiff's use, ample water, or any water, for the proper irrigation of said land or the crops and trees growing thereon during said years, as agreed in said Water Deed, and also by said notices, aforesaid, or in any manner at all; and utterly failed, neglected and refused to furnish any water to be used upon said land, or any part thereof, during the irrigation season, that is to say, between the 1st day of April and the 1st day of November, of each and every year after the year 1906, and to furnish canals and laterals of a carrying capacity sufficient to deliver water at the rate of $1/80$ of one second-foot per acre in main canal, and $1/50$ of one second-foot per acre, or any water, in the laterals from which said plaintiff was to take water for the irrigation of said land; and utterly failed, neglected and refused, as required by said Water Deed, to carry the amount of water or any amount of water, to which said plaintiff was and is entitled thereunder for use on said land, [107] through said defendant's canal system and measure and deliver the same at a point within one-half mile of said land where the water would be available for distribution and use thereon, but, on the contrary, said defendant carried and delivered some water, not sufficient, however, to properly irrigate said land, to a point, within one-half mile of said land, but said point was of too low an elevation to allow water to be distributed

therefrom over said land, or any part thereof, thus making all of the canal system of said defendant under and below all of said land so as to make it impossible to secure water therefrom at any point within one-half mile of said land, for the irrigation thereof; and did utterly fail, neglect and refuse to so locate and construct its irrigation system in such manner and of such capacity that ample water for the proper irrigation of said land, and the crops and trees aforesaid planted and growing thereon, could be carried or furnished or delivered or made available for use on said land, or any part thereof, during all of said irrigation seasons, or any part thereof, in accordance with its obligations under said Water Deed, but on the contrary constructed the canals and laterals of said system, and especially the lateral leading to within one-half mile of said land, in such a manner that the said lateral and all points of the same within one-half mile of said land is below the point where it is necessary for said plaintiff to take the water from said lateral for distribution and use upon her said land and each part of the same, thus making all of said lateral over a course and grade that is too low to permit of the distribution of water therefrom over and upon said land or any part thereof, and by reason of so constructing its said canals and laterals said plaintiff found it impossible to take and distribute water therefrom over said land, or any part thereof, for irrigation purposes or any purposes; and said defendant company did utterly fail, neglect and refuse to so maintain and keep its said canals and laterals in proper condition

and repair, but on the contrary maintained [108] its said lateral constructed as aforesaid to within a point one-half mile of said land, in such a manner that the same was filled with sand and obstructed thereby, and the banks thereof broken and washed out and that the drops in said lateral are so located on curves therein to cause the water to wash and destroy the banks and the bottom thereof, and the banks so maintained that there were at all times low points in the banks and high points in the bottom thereof, all making it impossible for any water to be carried or conveyed or delivered through the same to the end of the lateral or to any point within one-half mile of said land, or so that water could be carried or delivered or made available through said system for the proper irrigation, or any irrigation of said land or any part thereof, or the crops or trees planted and growing thereon; that said defendant company with a full knowledge at all times of said conditions, failed and refused *to refused* to remedy the defects in the lateral locations and construction and maintenance thereof and failed, neglected and refused, and still fails, neglects and refuses to relocate or reconstruct or remedy in any way the defective and improperly located and constructed parts of the canal and irrigation system aforesaid, or to repair and maintain the same, or to carry and deliver said water as it agreed to do under said Water Deed, whereby said plaintiff was during all the times herein mentioned and still is deprived of the water supply to which she is entitled for said land as aforesaid, although said defendant, at divers times during each

of said years, in response to the requests and demands of said plaintiff, repeatedly promises and agreed so to do.

VIII.

That said plaintiff caused due care and attention to be given the crops and trees aforesaid and all of the same, and used good and sufficient husbandry in the planting, care and cultivation thereof, and said crops and trees lived and thrived until the period [109] of the various years at which the artificial application of water for irrigation purposes became necessary to their existence, and had water been available at the necessary times during the irrigation seasons following the planting of the crops and trees aforesaid and at the times and in the quantities and amounts to which said plaintiff was entitled under said Water Deed, and which said defendant company had obligated itself to supply and deliver as aforesaid and as promised and in accordance with the notices given said plaintiff as aforesaid, said trees would have continued to live and thrive and the yield from said crops would have been as great at least as is usually received from such land well cultivated and supplied with water for irrigation purposes under ordinarily favorable conditions; that upon the failure of said company to supply water as aforesaid, said plaintiff endeavored at various times to preserve and prevent the destruction of said trees and to secure the greatest possible yield from said crops and prevent their absolute waste and destruction, by hauling water for use in the irrigation thereof from a neighboring stream at great trouble

and expense to herself; and in spite of the use of said water upon said crops and trees and notwithstanding the close care and attention given said crops and trees and the use of said plaintiff's best husbandry and endeavors to secure a sufficient yield therefrom and to preserve and promote the growth thereof, and solely by reason of the failure of defendant to deliver water therefor, as hereinbefore stated, and to do and perform its aforesaid obligations, agreements and duties, the ditches and flumes constructed by said plaintiff as aforesaid, were damaged and destroyed and became useless and valueless to said plaintiff and said crops and trees and the whole thereof were either entirely destroyed and lost to said plaintiff or partially destroyed, injured, stunted and cut short in their growth and yield and failed to mature, as hereinafter more fully appears. [110]

IX.

That the damages occurring to plaintiff and caused by the foregoing acts of defendant and the breaches aforesaid of the terms and conditions of said Water Deed and notices are as follows:

(a) That the said 306 apple, plum, cherry and pear trees put out and set upon said land in the Spring of 1909 were totally destroyed and lost to the plaintiff, to her damage in the sum of \$649.00;

(b) That the said crop of 71 acres of wheat planted on said land in the Fall of 1909 failed to mature and was injured, stunted and cut short in its growth, all to the damage of said plaintiff in the sum of \$700.00;

(c) That the said vegetables and garden stuff planted on 1 acre of said land in the Summer of 1909 was injured, stunted and cut short in its growth and production, in a manner to render the same valueless, all to the damage of said plaintiff in the sum of \$100.00;

(d) That the said 100 shade trees put out and set upon said land in the Spring of 1910 were totally destroyed and lost to this plaintiff, to her damage in the sum of \$100.00;

(e) That the said crop of 16 acres planted to oats in the Spring of 1910, failed to mature and was injured, stunted and cut short in its growth and production, all to the damage of said plaintiff in the sum of \$200.00;

(f) That the said crop of 11 acres planted to oats in the Spring of 1911 failed to mature and was injured, stunted and cut short in its growth, all to the damage of said plaintiff in the sum of \$150.00;

(g) That the said crop of potatoes planted on 10 acres of said land in the Spring of 1912, failed to mature and was injured, stunted and cut short in its growth and production, all to the damage of said plaintiff in the sum of \$600.00; [111]

(h) That said ditches and flumes constructed by plaintiff, as aforesaid, were destroyed and made useless and valueless to plaintiff and the sums expended thereon lost to plaintiff, all to her damage in the sum of \$500.00.

X.

That plaintiff's said boundary of land and all of the same lies under the canals, laterals, etc., making

up the irrigation system aforesaid, and is now, and has been during all the times mentioned herein susceptible of irrigation from said system; that said tract of land is dry and arid in character and requires the artificial use of water thereon before crops of any kind can be successfully raised; that there is no water of any kind available or obtainable on or near said tract of land which can be utilized for irrigation, cultivation, reclamation or other purposes on said land, other than through said irrigation works, nor has there been during any of the times mentioned herein, all of which said defendant company at all times well knew.

XI.

That at all times herein mentioned said plaintiff and her said assignor have fully and faithfully performed each and every condition and obligation by them to be performed under said Water Deed or otherwise due to said company from said plaintiff or her said assignor in regard to the land and water rights herein mentioned, and she is ready, able and willing to perform each and every condition and obligation to be by her performed thereunder hereafter.

XII.

That at all times herein mentioned up to about the 1st of May, 1911, said defendant company was in the possession, ownership and control of said irrigation works and all thereof; that as plaintiff is informed and believes, said defendant company, some time in the Spring or early Summer of the year 1911, made [112] some sort of a pretended or colorable transfer of the management of said irrigation system to

a corporation known as the Aberdeen-Springfield Canal Company, and thereafter up to the present time said Aberdeen-Springfield Canal Company has managed said irrigation works; that at the time of said pretended transfer the canals and laterals of said system, and especially the lateral which leads to within one-half mile of said land, as aforesaid, were and are now in the same defective condition as hereinbefore set forth, so that water could not, during said time, be distributed therefrom to and over any of said land in accordance with said Water Deed; and notwithstanding said pretended transfer, it was the duty of said defendant company to so remedy its said defectively constructed laterals and maintain the same in a proper manner and see that the plaintiff herein could and would receive the amount of water for her said land which said defendant had agreed to carry and deliver, as set forth in said Water Deed; and this plaintiff further alleges that said defendant company even after making said pretended transfer, as aforesaid, repeatedly promised this plaintiff prior to the planting of each of the crops during the years 1911 and 1912, as aforesaid, and agreed, that it would carry and deliver to plaintiff as it had agreed to do in said Water Deed, and relocate and reconstruct said canal leading to within one-half mile of said land, as aforesaid, and maintain the same, so that this plaintiff would and could receive the water to which she was entitled under said Water Deed, for use on said land and for said crops, and relying upon such promises and such agreements of said defendant to comply with and carry

out the provisions of said Water Deed, plaintiff planted said crops during said years believing that she would receive water therefor, but said defendant utterly failed, neglected and refused to so relocate and reconstruct and maintain said lateral so that plaintiff could receive any water therefrom for use on said land, under said Water Deed, to her damage as hereinbefore set forth; that [113] during the years 1911 and 1912, said defendant through its ownership and control of practically all of the stock of said Aberdeen-Springfield Canal Company controlled said company, and through said company selected and controlled its officers and directed all of its acts, and through said company controlled and operated and managed the said irrigation system.

XIII.

That plaintiff has demanded of defendant at divers times that said sums of damage be paid, but said defendant refused to pay the same or any part thereof, and still refuses so to do, and there is due the plaintiff from the defendant said sum of \$649.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1909; and the said sum of \$700.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1910; and the said sum of \$100.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1909; and the said sum of \$100.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1911; and the said sum of \$200.00, with interest at the rate of seven per cent per annum from October 1st, 1910; and the said sum of \$150.00, with interest at

the rate of seven per cent per annum from October 1st, 1911; and the said sum of \$600.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1912; and the said sum of \$500.00, with interest thereon at the rate of seven per cent per annum from October 1st, 1911.

WHEREFORE, plaintiff demands judgment against said defendant for the said sums of \$649.00, \$700.00, \$100.00, \$100.00, \$200.00, \$150.00, \$600.00, and \$500.00, or the aggregate sum of \$2999.00, together with interest due upon the respective sums making up said \$2999.00, from the dates and at the rate specified in paragraph XIII hereof; for her costs of suit, and such other and further relief as may be just and equitable in the premises.

GARLAND DRAPER, [114]

SULLIVAN & SULLIVAN,

All Residing at Boise, Idaho, Attorneys for Plaintiff.

State of Idaho,

County of Ada,—ss.

W. E. Sullivan, being first duly sworn, on oath says: That he is one of the attorneys of the plaintiff in the above-entitled cause and of the plaintiff named in the foregoing complaint; that he has read the same and knows the contents thereof and believes the facts stated therein to be true, and affiant further says that said plaintiff is absent from the county where her attorneys reside, and for that reason the complaint herein is not verified by said plaintiff, but by one of her said attorneys.

W. E. SULLIVAN.

Subscribed and sworn to before me this 11th day of March, 1913.

[Seal]

HARRY C. WYMAN,
Notary Public. [115]

**Exhibit "K" [Summons in State Court in Fitzgerald
et al. vs. American Falls Co., etc.].**

EXHIBIT "K."

*In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Power County.*

T. E. FITZGERALD and W. A. WEST,
Plaintiffs,

vs.

AMERICAN FALLS CANAL & POWER COM-
PANY, a Corporation,

Defendant.

THE STATE OF IDAHO Sends Greeting to
American Falls Canal & Power Company, the
Above-named Defendant:

You are hereby notified that a complaint has been filed against you in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power, by the above-named plaintiffs, and you are hereby directed to appear and answer the said complaint within twenty days of the service of this summons if served within said Judicial District, and within forty days if served elsewhere; and you are further notified that unless you so appear and answer said complaint within the time herein specified, the plaintiffs will take judgment against you as prayed in said complaint.

WITNESS MY HAND AND THE SEAL of said District Court this 6th day of April, 1914.

[Seal]

PAUL BULFINCH,

Clerk.

BAIRD & DAVIS,

Residence: American Falls, Idaho,

SULLIVAN & SULLIVAN,

Residence: Boise, Idaho,

Attorneys for Plaintiffs. [116]

District Court, Fifth Judicial District, State of Idaho. T. E. Fitzgerald and W. A. West, Plaintiffs, vs. American Falls Canal & Power Company, a Corporation, Defendant. Complaint. Filed April 6th, 1914, at 9:10 o'clock A. M. Paul Bulfinch, Clerk. Baird & Davis, Residence: American Falls, Idaho, Sullivan & Sullivan, Residence: Boise, Idaho, Attorneys for Plaintiffs. [117]

In the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County.

T. E. FITZGERALD and W. A. WEST,

Plaintiffs,

vs.

AMERICAN FALLS CANAL & POWER COMPANY, a Corporation,

Defendant.

Complaint [in State Court in Fitzgerald et al. vs. American Falls Co.].

The plaintiffs complain of the defendant, and for cause of action herein allege:

I.

That the defendant, American Falls Canal & Power

Company, is now, and during all the times herein-after mentioned, has been a corporation organized and existing under and by virtue of the laws of the State of Utah, and doing business in Bingham County, Idaho.

II.

That said defendant is a public service or a *quasi* public corporation, and was organized for the purpose of constructing and building that certain irrigation project and system known as the American Falls Canal & Power Company Project, situate in Bingham and Power (formerly a portion of Blaine and other counties) Counties, State of Idaho, by constructing or causing to be constructed, dams, ditches, conduits, flumes and other means for the purpose of diverting water from Snake River, and for the purpose of selling and transferring water rights therein for irrigation of lands lying under said system and for domestic purposes.

III.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00 to be paid in ten installments, receipt of the first of which, a cash payment of \$480.00, being [118] thereby acknowledged, the said American Falls Canal & Power Company made, executed and delivered to plaintiff, T. E. Fitzgerald, its certain warranty deed in writing, conveying a certain water right, a copy of which is hereto attached, marked Exhibit "A," and by this reference made a part hereof; and said complainant is now the owner and holder thereof.

IV.

That on the 8th day of December, 1906, for and in consideration of the sum of \$4,000.00 to be paid in ten installments, receipt of the first of which, a cash payment of \$480.00, being thereby acknowledged, the said American Falls Canal & Power Company made, executed and delivered to plaintiff, W. A. West, its certain warranty deed in writing, conveying a certain water right, a copy of which is hereto attached, marked Exhibit "B," and by this reference made a part hereof; and said complainant is now the owner and holder thereof.

V.

That the lands of said W. A. West, which are now owned by and in the possession of said West, described in said deed, to which the shares of water conveyed in said deed became attached and appurtenant, adjoins the lands described in said deed executed and delivered to said T. E. Fitzgerald, which lands are now owned by and in the possession of said Fitzgerald, and to which the shares of water conveyed in his said deed became attached and appurtenant.

VI.

That said defendant, after its organization, as aforesaid proceeded to construct and build its said canal and irrigation system for the purpose of supplying and delivering water for the irrigation of lands situate in Bingham and Blaine (a portion of which is now a portion of Power County) Counties, including the lands of plaintiffs herein; but the same is not, nor ever has been, constructed or completed so as to carry and deliver water of said [119]

system for the irrigation of the lands of said plaintiffs or any portion thereof, as required by the deeds aforesaid; that sufficient water is not available under the present works as completed at the present time to furnish the contract holders under said system who are to take their water from lateral No. 33, with sufficient water to properly irrigate their lands.

VII.

That notwithstanding the said deeds and the obligations assumed by, and devolving upon, said defendant thereunder to carry, furnish and deliver ample water for the proper irrigation of the lands of said plaintiffs, although there was plenty of water available at the place of diversion, and, notwithstanding the fact that each of said plaintiffs had duly and fully performed all the conditions and obligations of said deeds to be by said plaintiffs performed, utterly failed, neglected and refused and still fails, neglects and refuses, to construct and complete its said system, so as to furnish, carry, deliver and make available for each of said plaintiff's use, ample water, or any water, for the proper irrigation of the lands of said plaintiffs, or any portion thereof, or crops and trees planted and growing thereon in accordance with each of said deeds; said defendant has utterly failed, neglected and refused and still fails, neglects and refuses to construct canals and laterals of a carrying capacity sufficient to deliver water at the rate of one-eightieth of one second-foot per acre at its main canal, and one-fiftieth of one second-foot per acre, or any water, in the lateral from which said plaintiffs were to take water for the irrigation of their said

lands, but, on the contrary, said defendant constructed its said canals and laterals and carried and delivered some water, not sufficient however, to properly irrigate any of said lands, to a point within one-half mile of said land of said T. E. Fitzgerald, but said point was at too low an elevation to allow water to be distributed therefrom over said lands of said plaintiffs, or any part thereof, thus making all of the canal system of said defendant under and below the said lands [120] of said plaintiffs so as to make it impossible to secure water therefrom at any point within one-half mile of said lands, for the irrigation thereof; and did utterly fail, neglect and refuse, and still fails, neglects and refuses, to so locate and construct its said irrigation system in such a manner and in such capacity that ample water for the irrigation of said lands of said plaintiffs, and the crops and trees thereon growing, can or could be carried or furnished or delivered or made available for use on said lands of said plaintiffs or any part thereof, during all of said irrigation seasons, or any part thereof, in accordance with its obligations, under said deeds, but, on the contrary, constructed the canals and laterals of said system, and especially the lateral leading to the lands of said plaintiffs from which they were to take water for their said lands, in such a manner that said lateral and all points of the same within one-half mile of any of said lands is below the point where it is necessary for said plaintiff to take the water from said lateral for distribution and use upon the said lands of said plaintiffs and each part of the same, thus making all of said lateral

over a course and grade that is too low to permit of the distribution of water therefrom over and upon said lands or any part thereof. By reason of so constructing its said canals and laterals, said plaintiffs found, and still find, it impossible to take or distribute water therefrom over their said lands, or any part thereof, for irrigation purposes, or any purposes; that said defendant company, with the full knowledge at all times of said conditions, failed and refused, and still fails and refuses, to remedy the defects in the lateral locations and construction and still fails, neglects and refuses to relocate or reconstruct or complete said laterals and said system, or remedy in any way the defective and improperly located and constructed parts of the canal and irrigation system aforesaid; whereby each of said plaintiffs was, and has been, since [121] the execution of their said deeds, and still is deprived of the water supply to which he is entitled for his said land as aforesaid.

VIII.

That said defendant notified each of said plaintiffs herein prior to the construction of the lateral leading to the lands of said plaintiffs that it would construct and build a lateral to be known as No. 33, from which it would expect each of said plaintiffs and other water-right holders, having lands lying under the same, to take water therefrom for the irrigation of their lands; which said lateral No. 33 is the one constructed as set forth in paragraph VII herein; that said defendant informed and notified each of the plaintiffs herein that it would construct

said lateral of sufficient elevation and to a certain point near the west side-line of the land of said T. E. Fitzgerald and with the understanding between said defendant and the plaintiffs herein that they would then construct a common lateral for a certain distance across the land of said Fitzgerald and then said West could make connections therewith with a lateral leading to his land for the irrigation thereof; that this arrangement was made and agreed upon by reason of the location of the lands of the plaintiffs herein, the same being adjoining and contiguous.

IX.

That during the year 1909, said plaintiffs, at great expense, constructed the necessary laterals, ditches, flumes and gates leading from the point aforesaid, at which they were to connect with the said defendant company irrigation system to and over said lands of said plaintiffs for taking and distributing water thereon, and said plaintiffs were ready, willing and fully prepared, and said ditches and flumes of said plaintiffs were properly located, constructed and of sufficient capacity, to receive and distribute the water they were entitled to under said deeds upon their said lands for the irrigation thereof.
[122]

X.

That the boundaries of the lands of each of said plaintiffs and all of the same lie under the canals, laterals, etc., making up said irrigation system of the defendant, and is now, and has been, during all the times mentioned herein, susceptible of irrigation under said system; that said tracts of land are dry and arid in

character and require the artificial use of water thereon before crops of any kind can be successfully raised; that there is no water of any kind available or obtainable on or near said lands, which can be utilized for irrigation, cultivation, reclamation or other purposes on said land, other than through said irrigation system, nor has there been, during any of the times mentioned herein, all of which said defendant company at all times well knew.

XI.

That said defendant corporation is insolvent in law and in fact and unable to pay its debts or meet its current obligations as they become due, and is without means to complete said system, especially said lateral No. 33, so as to deliver water to each of these plaintiffs in accordance with their said deeds; that there are no assets of said defendant company available for the completion of said system, especially said lateral No. 33, except the amounts remaining unpaid on the deferred payments of deeds executed by said company to purchasers of water rights under said system and that there are a large number of said deferred payments still remaining unpaid, amounting to many thousands of dollars and more than sufficient to complete said system and especially said lateral No. 33, the completion of which will not exceed the sum of \$2,500.00.

XII.

That said plaintiff, T. E. Fitzgerald, has made three payments on his said deed, amounting to the sum of \$1,638.72, and the said plaintiff, W. A. West, has made the first payment on his said deed, amount-

ing to the sum of \$480.00; that in accordance with the [123] terms of their said contract, the plaintiffs herein, and each of them, still owe to the defendant corporation the balance of the purchase price on the water right and water shares conveyed therein; that otherwise, each of said plaintiffs has at all times since the execution of said deeds, fully performed each and every condition and obligation to be by him performed under his said deed or otherwise due to said company from each of said plaintiffs; that each of said plaintiffs has failed and refused to pay the other deferred payments and interest on his said contract, for the reason that said defendant has failed and refused and neglected to complete said system, especially said lateral No. 33, and because the said defendant still fails and refuses to place said system in a condition to deliver water to each of said plaintiffs for the year 1914, or at all, for the irrigation of its said lands or any part thereof; that each of said plaintiffs is ready and willing to perform the terms and conditions of his said deed, in all things to be kept and performed by him, whenever the defendant corporation is compelled by this Court to perform the terms and conditions of said deeds on its part.

XIII.

That said plaintiffs are jointly interested in and are joint owners with the other water users of the said irrigation system and they are entitled to have all deferred payments still remaining unpaid and the proceeds of both principal and interest received under and by virtue of all deeds and all moneys due

and owing thereon and upon which any deferred payments or balances are due, applied upon the completion of said irrigation system, and these defendants are especially entitled to have sufficient thereof applied to the completion of said lateral No. 33, and to the performance of all other terms and conditions of said deeds of said plaintiffs to be kept and performed by said defendant corporation. [124]

XIV.

That each of said plaintiffs has cultivated and improved large portions of their said lands at great expense and labor and have been unable to secure water under their said deeds for the irrigation thereof; and each of said plaintiffs has, during past irrigation seasons, suffered great damage and loss, amounting to many thousand dollars, by reason of the destruction of their crops and trees planted on their said lands by reason of the failure to receive water under their said deeds and to have said lateral No. 33 completed as aforesaid; that they will be in great need of water for the irrigation season of 1914 for the use on their said lands; that said defendant company does not intend to complete said system and especially said lateral No. 33, so that neither of said plaintiffs can secure water for the irrigation of his said lands under his said deed; that unless a receiver is appointed by this court and authorized to take possession of this system and administer and complete the same, these plaintiffs and each of them, and the other water-right holders under said system who have not received water in accordance with

their water deeds, will suffer great and irreparable injury and loss.

XIV.

That the amounts or deferred payments due or to become due on said deeds amounted to several hundred thousand dollars; that said American Falls Canal & Power Company has been, for several years, collecting, or causing to be collected, the deferred payments on the water deeds executed by said defendant to the settlers and water users under said system, applying, or having applied, the proceeds to its own use and benefit; that said defendants threaten to, and unless prevented by order of this Court, will continue to collect or cause to be collected any and all deferred payments or amounts unpaid on said water deeds as the same become due and apply and appropriate said amounts so collected to the use and [125] benefit of said defendant and thereby divert said amounts so collected as aforesaid, so that the same will not be expended in the completion of said canal system, as aforesaid.

XV.

That it is for the best interests of the plaintiffs herein and their only remedy that a receiver be appointed for said defendant, American Falls Canal & Power Company, and authorized to collect sufficient moneys due and owing or to become due and owing from the holders of water deeds entered into with said defendant corporation, and to expend the same so collected as shall be necessary to complete said irrigation system, and especially said lateral No. 33, so that said plaintiffs and each of them may be sup-

plied with the amount of water to be delivered to him as required by his said deed.

XVI.

That neither of said defendants has a plain, speedy and adequate remedy at law.

WHEREFORE, plaintiffs pray and demand:

I.

That some competent and proper person be appointed receiver by the Court, with power to complete said system and with full power to collect sufficient moneys due and owing or to become due and owing from the holders of water deeds entered into with said defendant corporation and to expend the same so collected as shall be necessary to complete said irrigation system, and especially said lateral No. 33, so that said plaintiffs and each of them may be supplied with the amount of water to be delivered to him as required by his said deed.

II.

For costs of suit herein and for such other and further relief as may be just and equitable in the premises.

SULLIVAN & SULLIVAN,

Residence: Boise, Idaho,

BAIRD & DAVIS,

Res.: American Falls, Idaho,

Attorneys for Plaintiffs. [126]

State of Idaho,

County of Ada,—ss.

W. E. Sullivan, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiffs

in the above-entitled cause and makes this verification for and on behalf of said plaintiffs; that he has read the foregoing complaint, knows the contents thereof, and that he believes the facts stated therein to be true; that the reason why this verification is not made by the plaintiffs herein is because said plaintiffs are absent from Ada County, where said attorney resides; and for the further reason that the facts stated in said complaint are within the knowledge of this affiant.

W. E. SULLIVAN.

Subscribed and sworn to before me, this 2d day of April, 1914.

[Seal]

R. GARLAND DRAPER,

Notary Public. [127]

**Exhibit "L" [Petition of Trustee in Bankruptcy for
Order to Show Cause, etc.].**

EXHIBIT "L."

*In the District Court of the United States for the
District of Idaho.*

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

The petition of Glenn R. Bothwell, as trustee in bankruptcy of the American Falls Canal & Power Company, respectfully shows to the Court:

I.

That on the 24th day of February, 1914, the American Falls Canal & Power Company, a corporation organized and existing under and pursuant to the laws of the State of Utah, filed its voluntary petition

in bankruptcy in the District Court of the United States for the District of Utah, wherein it prayed to be adjudged a bankrupt under the laws of the United States. That thereafter on the 27th day of February, 1914, the United States District Court for the District of Utah, made and entered its order in said matter adjudicating the said American Falls Canal & Power Company a bankrupt within the purview of said laws of the United States, and referred the estate of said bankrupt to Charles Baldwin, referee in bankruptcy of said court, for administration. That a copy of said order of adjudication and reference is hereto attached marked Exhibit "A" and made a part of this petition.

II.

That after the reference of said matter to the said referee, said referee caused notice to creditors to be published pursuant to law and the orders of the Court, and on the 16th day of March, 1914, a meeting of the creditors of said bankrupt was held before the said Charles Baldwin, referee in bankruptcy, at Salt [128] Lake City, Utah, and at said meeting claims were proved and allowed by said referee, and the creditors of said bankrupt by their votes elected Glenn R. Bothwell, your petitioner, trustee in said bankruptcy matter, and upon such election the said referee duly made and entered an order appointing the said Glenn R. Bothwell a trustee in said matter and fixed his bond at the sum of One Hundred Thousand (\$100,000.00) Dollars. That thereafter on said date the said Glenn R. Bothwell executed and delivered said bond and did all things that was necessary

to qualify him as such trustee, and he is now the duly elected, appointed, qualified and acting trustee in the matter of the bankruptcy of the said American Falls Canal & Power Company.

III.

Your petitioner further represents that said bankrupt estate consists of real and personal property located within the States of Utah and Idaho, and is specifically described and scheduled in said original bankruptcy proceedings.

IV.

That on the 2d day of April, 1914, one T. E. Fitzgerald and one W. A. West, as parties plaintiffs, acting by and through Spencer L. Baird and Ben W. Davis, engaged in the practice of law under the firm name of Baird & Davis, at American Falls, Idaho, and W. E. Sullivan and L. L. Sullivan, engaged in the practice of law at Boise, Idaho, under the firm name of Sullivan & Sullivan, instituted a suit in the District Court of the Fifth Judicial District in and for Power County, State of Idaho, against the said bankrupt, the American Falls Canal & Power Company, and on said date caused summons to be issued and served upon said bankrupt, and upon the same date applied to the Court for and the Court issued an order requiring said bankrupt to appear before Honorable Alfred Budge, at American Falls, Idaho, on the 11th day of April, 1914, and show cause, if any [129] it has, why an order should not be made and entered by said court appointing a receiver of said defendant company, with power to complete a certain lateral to said American Falls Canal, and to col-

lect sufficient moneys due and owing said bankrupt, or to become due and owing from the holders of water deeds of said bankrupt, and to expend the same in the completion of said canal and said lateral. That a copy of said complaint, summons and order to show cause is hereto attached marked Exhibit "B," and made a part of this petition.

V.

Your petitioner further represents that by said proceeding the said T. E. Fitzgerald and W. A. West are attempting to secure preferences and advantages over other creditors of said corporation and to compel the application and use of the assets of said estate for their own special benefit and advantage, and greatly to the annoyance of your *petition* and to the damage of other creditors, contrary to the provisions of the said bankruptcy law, and that it would be advisable and to the advantage of said estate that some suitable person be appointed ancillary trustee by this Court to act for and in connection with your petitioner in the administration of said estate.

WHEREFORE, your petitioner prays:

1. For an order requiring the said T. E. Fitzgerald and W. A. West, and Spencer L. Baird and Ben W. Davis, and W. E. Sullivan and L. L. Sullivan, as attorneys for the said T. E. Fitzgerald and W. A. West, plaintiffs in said proceedings, to appear before this court at a time certain to be designated by the Court, and show cause, if any they have, why they should not be permanently enjoined from instituting any proceeding in any State court of said State of Idaho against your petitioner or the said American

Falls Canal & Power Company, bankrupt, and from directly or indirectly interfering with the possession or disposition of the assets of said bankrupt, [130] and in the meantime and until said order can be heard, your petitioner prays for an order enjoining and restraining the said T. E. Fitzgerald and W. A. West, and each and all of their said attorneys, from appearing before the said Honorable Alfred Budge on the said 11th day of April, 1914, or at any other time or before any other Judge or court in the said State of Idaho, excepting only this court, and applying for or prosecuting said order or any other order to show cause, and from making said application or any other application for the appointment of a receiver of said bankrupt corporation, or from interfering with the possession, use or disposition of any of the assets of said bankrupt corporation.

2. Your petitioner prays that upon final hearing of said order the Court designate and appoint some proper and suitable person as ancillary trustee in the matter of the bankruptcy of said American Falls Canal & Power Company, with full power and authority to act under and in connection with your petitioner in the collection and distribution of the assets of said bankrupt corporation and the administration of said estate, pursuant to law and the orders of the District Court of the United States for the District of Utah and of this court.

3. Your petitioner prays for general relief, including costs herein.

J. D. SKEEN,
L. R. MARTINEAU and
I. B. EVANS,
Solicitors for Petitioner,
Walker Bank Building, Salt Lake City, Utah.

State of Utah,
County of Salt Lake,—ss.

Glenn R. Bothwell, being first duly sworn, deposes and says: That he is the person named as petitioner in the foregoing petition; that he has read said petition, knows the contents thereof and that the same is true.

GLENN R. BOTHWELL.

Subscribed and sworn to before me this 10th day of April, 1914.

[Seal]

WM. J. COWAN,
Notary Public. [131]

*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Order to Show Cause.

It appearing to the Court from the petition of Glenn R. Bothwell, as trustee in the matter of the bankruptcy of the American Falls Canal & Power Company, that the said American Falls Canal & Power Company was on the 24th day of February,

1914, by the District Court of the United States for the District of Utah, duly adjudicated a bankrupt, and that such proceedings were thereafter had that the said Glenn R. Bothwell became and now is the duly appointed, qualified and acting trustee of said bankrupt. And it further appearing to the Court that said bankrupt estate consists of real and personal property located in Utah and Idaho, and that on the 2d day of April, 1914, one T. E. Fitzgerald and one W. A. West, acting by and through Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, have instituted a proceeding in the District Court for Power County, State of Idaho, and are seeking to secure the appointment of a receiver to take possession of the assets of said bankrupt,—

NOW, THEREFORE, upon motion of J. D. Skeen, one of the solicitors for the petitioner, it is ordered that the said T. E. Fitzgerald and W. A. West and Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, appear before this Court at Boise, Idaho, on the 17th day of April, 1914, and show cause, if any they have, why they should not be enjoined and restrained from further prosecuting said action wherein T. E. Fitzgerald and W. A. West are plaintiffs and the American Falls Canal & Power Company, a corporation, is defendant, and from presenting said order to show cause or otherwise applying to said [132] court or any other court in the State of Idaho for an order appointing a receiver of said American Falls Canal & Power Company, or of any of its property located in the State of Idaho or elsewhere or from directly or indirectly

taking or attempting to take possession of any of the real or personal property or assets of said American Falls Canal & Power Company, or from causing or seeking to cause any other person or corporation to take possession of said property or assets, or otherwise interfering with the administration of the assets of said corporation or the possession, use or disposition of its property.

And it is further ordered that until said matter can be heard on said 17th day of April, 1914, or any other date to which it might be by this court continued, it is ordered that the said T. E. Fitzgerald and W. A. West and Spencer L. Baird, Ben W. Davis, W. E. Sullivan and L. L. Sullivan, their attorneys, be and they are hereby enjoined and restrained from doing or attempting to do any of the things hereinabove specified.

Provided, however, that this order shall not take effect until the said Glenn R. Bothwell, as such petitioner, shall have executed and delivered to the clerk of this court a good and sufficient undertaking in the penal sum of Twenty-five Hundred (\$2500.00) Dollars.

Dated this 13th day of April, 1914.

F. S. DIETRICH,
Judge. [133]

**[Order Enjoining and Restraining T. E. Fitzgerald
and W. A. West from Proceeding Further in
Action, etc.]**

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN BANKRUPTCY.

**In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.**

The order to show cause why T. E. Fitzgerald and W. A. West should not be enjoined from further prosecuting an action in the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County, wherein T. E. Fitzgerald and W. A. West are plaintiffs and the American Falls Canal & Power Company is defendant, praying for the appointment of a receiver, coming on regularly for hearing, J. D. Skeen appearing as attorney for Glenn R. Bothwell, Trustee of said bankrupt, and W. E. Sullivan appearing as attorney for said T. E. Fitzgerald and W. A. West; and it appearing to the Court that said bankrupt was possessed of property located within the State of Idaho and that the legal title and possession of said property was in the trustee prior to the institution of said proceeding; and it further appearing that it is the duty of the said trustee in bankruptcy to apply to the referee in bankruptcy for authority to reconstruct and rebuild a certain lateral conveying water from American Falls Canal & Power Co. system to the lands of said

T. E. Fitzgerald and W. A. West—commonly known as Lateral No. 33—so as to properly irrigate said lands;

IT IS ORDERED that said T. E. Fitzgerald and W. A. West be, and they are, hereby enjoined and restrained from proceeding further in said action in the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County, wherein the said T. E. Fitzgerald and W. A. West are plaintiffs, until further order of this Court; and

IT IS FURTHER ORDERED that the said Glenn R. Bothwell [134] as trustee in the Matter of the Bankruptcy of the American Falls Canal & Power Co., make application at once for authority from the said Bankruptcy Court within the District of Utah, to reconstruct and rebuild said Lateral No. 33 in such a manner as to convey water from the main canal of the American Falls Canal & Power Company System to the lands owned by the said T. E. Fitzgerald and W. A. West for the proper irrigation of said lands, pursuant to the contracts attached to complaint in said action and to the petition herein as Exhibit "B," the expense of such reconstruction work to be paid as directed by said Bankruptcy Court; and

IT IS FURTHER ORDERED that the said Glenn R. Bothwell, as such trustee, report to this Court his proceedings in the matter on the 5th day of May, 1914, at the hour of ten o'clock A. M.

Dated this 17th day of April, 1914.

F. S. DIETRICH,
United States District Judge.

[Endorsed]: Filed May 4, 1914. A. L. Richardson, Clerk. [135]

*In the United States District Court for the District
of Idaho, Southern Division.*

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

**Order [Vacating and Setting Aside Order Dated
April 17, 1914, etc.].**

The Court having heretofore, to wit, on April 17, 1914, made an order temporarily restraining T. E. Fitzgerald and W. A. West from taking certain proceedings in the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County, and having directed the applicant for the injunctive order, Glen R. Bothwell, trustee in bankruptcy, to make an application at once for authority from the Bankruptcy Court in Utah to reconstruct and rebuild a certain lateral therein referred to as Lateral No. 33, in such manner as to convey water from the main canal of the American Falls Canal & Power Company's system to the lands owned by T. E. Fitzgerald and W. A. West, and it now appearing to the Court from a report made and filed herein that no such application has been made, but that upon the other hand an application has been made to the Bankruptcy Court of Utah for the rejection of the claim of said Fitzgerald and said West that such lateral be constructed under their contracts, and it further appearing to the Court that there is danger

that unless such lateral is constructed without delay said Fitzgerald and said West will not be able to irrigate their lands during the irrigating season for 1914;

It is therefore ordered that said former order, dated April 17, 1914, be, and the same is hereby vacated and set [136] aside and the injunctive relief prayed for by the trustee in bankruptcy is denied.

It is agreed that this matter has come on for hearing upon this 4th day of May, instead of the 5th day of May, as provided in said former order, by agreement and for the convenience of counsel in the case.

The petitioner, the trustee, is given an exception.

Dated this 4th day of May, 1914.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 4, 1914. A. L. Richardson, Clerk. [137]

[Petition for Appeal from Interlocutory Order or Decree of May 4, 1914, and Order Allowing Appeal, etc.]

In the District Court of the United States for the District of Idaho, Southern Division.

IN BANKRUPTCY.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

PETITION ON APPEAL BY GLENN R. BOTHWELL, TRUSTEE IN BANKRUPTCY OF THE AMERICAN FALLS CANAL & POWER COMPANY, BANKRUPT.

The above-named Glenn R. Bothwell, Trustee in bankruptcy, considering himself aggrieved by the interlocutory order or decree made and entered on the 4th day of May, A. D. 1914, in the above-entitled cause, to the extent that said order or decree vacated the interlocutory order or decree made and entered on the 17th day of April, A. D. 1914, in the above-entitled cause, granting said Trustee injunctive relief enjoining T. E. Fitzgerald and W. A. West from proceeding further in an action, therein referred to, pending in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, wherein the said T. E. Fitzgerald and W. A. West, are plaintiffs and said American Falls Canal & Power Company is defendant, and also in denying said Trustee in bankruptcy the injunctive relief against said T. E. Fitzgerald and W. A. West prayed for by him in the above-entitled cause; does hereby appeal from such interlocutory order or decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, filed herein, and prays that this, his [138] appeal, may be allowed and that a transcript of the record, proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the United States Cir-

cuit Court of Appeals in and for the Ninth Circuit.

L. R. MARTINEAU, Jr.,

ISAAC BLAIR EVANS,

Attorneys for Glenn R. Bothwell, Trustee in Bankruptcy.

A. L. HOPPAUGH,

CHARLES C. DEY,

Of Counsel.

And now, to wit, on the 15th day of May, A. D. 1914, it is ordered that the appeal be allowed as prayed for. Bond on appeal fixed at \$200.00.

FRANK S. DIETRICH,

District Judge for the District of Idaho.

[Endorsed]: Filed May 15, 1914. A. L. Richardson, Clerk. [139]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN BANKRUPTCY—No. —.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Assignment of Errors.

Comes now Glenn R. Bothwell, Trustee in bankruptcy of said American Falls Canal & Power Company, bankrupt, and files the following assignment of errors upon which he will rely upon his appeal from the order or decree made by this Honorable Court on the 4th day of May, A. D. 1914, in the above-entitled matter, and said Trustee in bankruptcy says

that said order or decree in said cause is erroneous and against the just rights of said trustee for the following reasons:

I.

The Court erred in vacating and setting aside, by its order or decree of May 4th, 1914, the injunction granted by its former order or decree herein dated April 17th, 1914, enjoining and restraining T. E. Fitzgerald and W. A. West from proceeding further in the action pending in the District Court of the Fifth Judicial District of the State of Idaho in and for Power County, [140] wherein the said T. E. Fitzgerald and W. A. West are plaintiffs and said American Falls Canal & Power Company is defendant.

II.

The Court erred in denying, by its order or decree of May 4th, 1914, the injunctive relief prayed for by Glenn R. Bothwell, Trustee in bankruptcy of said American Falls Canal & Power Company, by his petition filed herein on the 11th day of April, A. D. 1914, restraining and enjoining T. E. Fitzgerald and W. A. West from proceeding in any State court of the State of Idaho against said Trustee in bankruptcy or said American Falls Canal & Power Company, bankrupt, and from directly or indirectly interfering with the possession or disposition of the assets of said bankrupt.

III.

The Court erred in its finding or recital contained in its order or decree herein, made and filed May 4th, 1914, wherein it is recited:

“And it further appearing to the Court that there is danger that unless such lateral is constructed without delay, said Fitzgerald and said West will not be able to irrigate their lands during the irrigating season for 1914.”

In that, there was no evidence whatsoever to support said finding or recital. On the contrary, as it appears by the record herein, there was no legal basis or foundation to support said finding or recital; and further that the entire subject matter involved in said finding has been submitted to and was then before the District Court of the United States in and for the District of Utah, as the primary court of bankruptcy, and was there pending and has not been passed upon nor determined.

WHEREFORE, your petitioner, the Trustee in bankruptcy, prays that the Court would allow an appeal herein from said order [141] or decree of May 4th, 1914; and would fix the amount and approve a bond to operate as a *supersedeas* of said order appealed from and a continuation of the injunction order of April 17th, 1914.

L. R. MARTINEAU, Jr.,

ISAAC BLAIR EVANS,

Attorneys for Glenn R. Bothwell, Trustee in Bankruptcy.

A. L. HOPPAUGH,

CHARLES C. DEY,

Of Counsel. [142]

[Order Allowing Appeal, Fixing Amount of Bond
on Appeal, and Denying Prayer for a Superse-
deas.]

*In the United States District Court for the District
of Idaho.*

In the Matter of AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

ORDER ALLOWING APPEAL AND DENYING
A SUPERSEDEAS.

Glenn R. Bothwell, Trustee in bankruptcy of the American Falls Canal and Power Company, having this day presented his petition praying for an order allowing an appeal from an order made and entered May 5th, 1914, and also praying for a *supersedeas*:

It is ordered that the appeal be allowed and the bond on appeal is fixed at \$200.00; the prayer for a *supersedeas* is denied.

The denial of the *supersedeas* is put upon the ground specially that the original injunction or restraining order which was vacated by the order appealed from was not signed after a consideration of the merits of the application therefor, but upon the assent of counsel for West and Fitzgerald, upon the condition and with the understanding on the part of the Court, that the trustee would, without delay, seek authority from the Utah court to construct the laterals referred to in the record, as he is directed to do in the order. The trustee having now failed to comply with such direction, and having pursued a

contrary course, it is thought that it would be improper to continue in force the original order.

May 15, 1914.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 15, 1914. A. L. Richardson, Clerk. [143]

THE AETNA ACCIDENT AND LIABILITY
COMPANY, HARTFORD, CONNECTICUT.

MORGAN G. BULKELEY, PRESIDENT.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN BANKRUPTCY—No. —.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Glenn R. Bothwell, Trustee in bankruptcy
of said bankrupt, as principal, and the Aetna Acci-
dent and Liability Company, a corporation of the
State of Connecticut and licensed to become sole
surety upon bonds in the State of Idaho, as surety,
are held and firmly bound unto T. E. Fitzgerald and
W. A. West in the full and just sum of Two Hundred
(\$200.00), to be paid to the said T. E. Fitzgerald and
W. A. West, his and their certain attorneys, execu-
tors, administrators or assigns, to which payment
well and truly to be made we bind ourselves, our

successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately at the District Court of the United States for the District of Idaho, Southern Division, in a suit depending in said court in said above-entitled bankruptcy matter between Glenn R. Bothwell, Trustee in bankruptcy of said bankrupt, petitioner, and T. E. Fitzgerald and W. A. West, respondents, an order or decree was rendered against the said petitioner, Glenn R. Bothwell, Trustee in bankruptcy, dissolving or vacating an injunction previously granted by said court in said matter and cause, also denying the said petitioner any injunctive relief; and

WHEREAS, the said petitioner has obtained an appeal of the said court to reverse the said order or decree in the aforesaid matter and suit upon the execution of a bond in the penalty of \$200.00, with good and sufficient surety to be approved by said District Court conditioned according to law, and has also obtained a citation directed to the said T. E. Fitzgerald and W. A. West citing and admonishing him and them to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, thirty days from and after the date of said citation:

NOW, THEREFORE, if the above-named petitioner and appellant, Glenn R. Bothwell, Trustee in bankruptcy, shall prosecute his appeal to effect, and

answer all costs, if he fails to make his plea good, then this obligation to be void; otherwise to remain in full force and effect. [144]

GLENN R. BOTHWELL,
Trustee in Bankruptcy.
THE AETNA ACCIDENT AND LIABILITY COMPANY.

By B. F. GROWEG,
Resident Vice-President.

[Seal] Attest: JNO. T. BRUNN,
Resident Assistant Secretary.
FRED VEALD,
Resident Agent.

Approved by

FRANK S. DIETRICH,
Judge of the District Court of the United States for
the District of Idaho.

[Endorsed]: Dated May 25th, 1914. A. L. Richardson, Clerk. [145]

IN BANKRUPTCY—No. —.

In the Matter of the AMERICAN FALLS CANAL
& POWER COMPANY, a Corporation,
Bankrupt.

Praeipie for Transcript on Appeal.

To the Clerk of Said Court:

You are hereby requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause, and to include in such transcript of record the entire record

of all proceedings in said court in the above-entitled matter.

Dated this 14th day of May, A. D. 1914.

L. R. MARTINEAU, Jr.,

ISAAC BLAIR EVANS,

Attorneys for Glenn R. Bothwell, Trustee in Bankruptcy.

A. L. HOPPAUGH,

CHARLES C. DEY,

Of Counsel.

[Endorsed]: Filed May 15, 1914. A. L. Richardson, Clerk. [146]

Citation [on Appeal (Original)].

The United States Circuit Court of Appeals for the Ninth Circuit.

United States of America,—ss.

To T. E. Fitzgerald and W. A. West, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the District Court of the United States for the District of Idaho, Southern Division, in the matter of the American Falls Canal & Power Company, a corporation, bankrupt, wherein Glenn R. Bothwell, Trustee in bankruptcy of said bankrupt, is appellant and you are appellees, to show cause, if any there be, why the order or decree rendered in said cause vacating and setting aside

the injunction order dated April 17th, 1914, and denying the injunctive relief prayed for by the Trustee in bankruptcy as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable FRANK S. DIETRICH, Judge of the United States District Court for the District of Idaho, this 15th day of May, A. D. 1914.

FRANK S. DIETRICH,
Judge of the United States District Court, for the
District of Idaho.

[Seal] Attest: A. L. RICHARDSON,
Clerk. [147]

Service of the within Citation by copy admitted this 18th day of May, 1914.

SULLIVAN & SULLIVAN,
Attorneys for Respondent.

[Endorsed]: No. 679. U. S. District Court, District of Idaho. In the Matter of the American Falls Canal & Power Company, a Corporation, Bankrupt. Citation. Filed May 18th, 1914. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy Clerk. [148]

Return to Record.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Cir-

cuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

By E. B. Yarrington,

Deputy. [149]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States for the
District of Idaho, Southern Division.*

In the Matter of AMERICAN FALLS CANAL &
POWER COMPANY, a Corporation,
Bankrupt.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 150, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$84.70, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 28th day of May, 1914.

[Seal]

A. L. RICHARDSON,

Clerk.

By E. B. Yarrington,

Deputy Clerk. [150]

**[Petition for Revision Under Section 24 of
Bankruptcy Law of 1890, etc.]**

*In the District Court of the United States for the
District of Idaho.*

IN BANKRUPTCY—No. —.

In the Matter of AMERICAN FALLS CANAL &
POWER COMPANY, a Corporation,
In Bankruptcy.

To the Honorable, the Judges of the Circuit Court of
Appeals of the 9th Circuit of the United States.

The petition of Glenn R. Bothwell, as Trustee in
bankruptcy in the American Falls Canal & Power
Company, a corporation, respectfully shows to the
Court:

I.

That on the 24th day of February, A. D. 1914, the
American Falls Canal & Power Company, a corpora-
tion organized under and pursuant to the laws of the
State of Utah, filed its voluntary petition in bank-
ruptcy in the District Court of the United States for
the District of Utah, wherein it prayed to be adjudi-
cated a bankrupt under the laws of the United
States; that thereafter on the 27th day of February,
A. D. 1914, the District Court of the United States
for the District of Utah, made and entered its order
in said matter, adjudicating said American Falls
Canal & Power Company a bankrupt, within the pur-
view of said laws of the United States and referred
the estate of said bankrupt to the Honorable Charles

Baldwin, Referee in bankruptcy of said court, for administration.

II.

That after the reference of said matter to said referee, said referee caused notice to be published pursuant to law and to the orders of Court, and on the 16th day of March, A. D. 1914, a meeting of the creditors of said bankrupt was held before Honorable Charles Baldwin, Referee in bankruptcy, at Salt Lake City, State of Utah, and at said meeting, claims were proved and [152] allowed by said referee and the creditors of said bankrupt, by their votes, elected Glenn R. Bothwell, your petitioner, Trustee in said bankruptcy matter, and upon such election, said referee duly made and entered an order appointing the said Glenn R. Bothwell, your petitioner, such Trustee and fixed his bond at the sum of \$100,000.00. That thereafter, on said date, the said Glenn R. Bothwell executed and delivered said bond and did all things that were necessary to qualify him as such Trustee, and he, your petitioner, is now the duly elected, appointed, qualified and acting Trustee in the matter of the bankruptcy of the said American Falls Canal & Power Company.

III.

Your petitioner further represents that the said bankrupt's estate consists of real and personal property, located within the States of Utah and Idaho, and is specifically described and scheduled in said original bankruptcy proceedings.

IV.

That after such adjudications, the following pro-

ceedings were had in the case of said bankrupt, as will be shown more fully by the transcript of the record on Appeal in the above-entitled matter and certified to by the Clerk of Court, which transcript is hereby referred to and made a part of this petition. That on and prior to the 6th day of April, A. D. 1914, one W. A. West and one T. E. Fitzgerald, creditors of said bankrupt estate, had notice and full knowledge of the proceedings of the bankrupt herein, the adjudication of the said American Falls Canal & Power Company as such bankrupt, and the appointment of said Trustee in bankruptcy; nevertheless the said parties instituted a suit in the District Court of the 5th Judicial District in and for Power County, State of Idaho, against the said American Falls Canal & Power Company (Transcript, page 118). That in and by said action, the said parties ignored the proceedings in bankruptcy above referred to and the appointment [153] of said Trustee in bankruptcy, and shown by their complaint to procure an appointment of a receiver of the assets and effects of said bankrupt; and to enforce in such receivership proceedings, the repairs and completion of a certain lateral No. 33 of that certain canal and irrigation system originally constructed by said American Falls Canal & Power Company; that on the 6th day of April, A. D. 1914, the said W. A. West and T. E. Fitzgerald caused summons to be issued and served on said American Falls Canal & Power Company, and upon the same date applied to the Court for, and the Court issued an order requiring the said American Falls Canal & Power Company to appear before

Honorable Alfred Budge, Judge, at American Falls, State of Idaho, on the 11th day of April, A. D. 1914, and show cause, if any it had, why an order should not be made and entered by said Court, appointing a receiver for the purpose hereinbefore set out. (Transcript, page 9.)

V.

That upon receiving a notice of the action mentioned in the next preceding paragraph, your petitioner, as Trustee in bankruptcy, did file in the District Court of the United States for the District of Idaho, a petition (Transcript, page 1), setting forth that said action had been instituted and praying that the parties involved therein should be required to show cause before the Honorable Frank S. Dietrich, Judge, of the District Court of the United States for the District of Idaho, why they should not be permanently enjoined from instituting a proceeding in any court of said State of Idaho against said bankrupt, and from directly or indirectly interfering with the disposition of the assets of said bankrupt, and in the meantime, praying for a temporary restraining order and for other and further relief, as is set forth by said petition. [154]

VI.

That on the said 11th day of April, A. D. 1914, your petitioner, by his attorneys, filed a petition in the said District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Power, setting forth in detail the petition in bankruptcy herein, the adjudication by this Court and the appointment of your petitioner as Trustee, and sug-

gesting the ancillary proceedings hereinbefore referred to, pending before the District Court of the United States for the District of Idaho, and requested the said Court, Honorable Alfred Budge presiding, to stay the proceedings in said action; that notwithstanding said petition and the said application for the stay of said proceeding, the said State Court, on or about the 13th day of April, A. D. 1914, made and entered an order for the appointment of a receiver, with power to do the things prayed for in said complaint; that before a receiver qualified or said order had become effective, on the said 13th day of April A. D. 1914, the United States District Court for the District of Idaho issued an order (Transcript, page 132), requiring the said T. E. Fitzgerald and W. A. West, and their attorneys, to appear before that Court on the 17th day of April, A. D. 1914, and show cause why they should not be enjoined from further proceeding in said suit in the State Court, and in the meantime, and before said order could be heard, enjoining the said T. E. Fitzgerald and W. A. West and their attorneys from further prosecuting said proceedings in the State Court.

VII.

That on the 17th day of April, A. D. 1914, said order to show cause came on regularly for hearing, and after the introduction of evidence, showing the adjudication of said American Falls Canal & Power Company to be a bankrupt, the reference of said matter to the Honorable Charles Baldwin, as Referee in bankruptcy, and the appointment of your petitioner as Trustee [155] and his qualification

as such, the said United States District Court for the District of Idaho made and entered the order which is set forth on pages 134 and 135 of the Transcript herein referred to enjoining and restraining said T. E. Fitzgerald and W. A. West from proceeding further in said action in the District Court of the 5th Judicial District of the State of Idaho, in and for Power County, State of Idaho, wherein the said T. E. Fitzgerald and W. A. West are plaintiffs and the said American Falls Canal & Power Company is defendant, and further ordering Glenn R. Bothwell, as Trustee in the matter of the bankruptcy of the American Falls Canal & Power Company, to make application for authority from the said bankruptcy court within the District of Utah, to reconstruct and rebuild said lateral No. 33 in such a manner as to convey water from the main canal of the American Falls Canal & Power Company system to the lands owned by the said T. E. Fitzgerald and W. A. West in the proper irrigation of the said lands, pursuant to the contracts attached to the complaint for said action, the expense of such reconstruction work to be paid as directed by said bankruptcy court, and further ordering the said Glenn R. Bothwell as such Trustee, to report to the said court his proceedings in the matter on the 5th day of May, A. D. 1914.

VIII.

Your petitioner further shows that pursuant to the order set forth in the next preceding paragraph, the said Glenn R. Bothwell, as such Trustee, and by way of compliance with said order, presented to the District Court of the United States, in and for the

District of Utah, the petition set forth in the Transcript herein referred to on pages 54 to 135, wherein the entire matter was set out in full, and whereby your petitioner prayed the said District Court of the United States in and for the District of Utah, as the bankruptcy court of original jurisdiction for a decree in relation thereto, as appears more fully by said petition.

IX.

Your petitioner further shows that in order to comply [156] with the said order of the District Court of the United States for the District of Idaho, dated the 17th day of April, A. D. 1914, the said Glenn R. Bothwell presented to said Court a report as requested in said order, which report is set forth in the Transcript herein referred to on pages 51 and 52 together with a copy of the petition as set forth in said Transcript on pages 53 to 135.

X.

Your petitioner further shows that upon the presentation of the said report mentioned in the next preceding paragraph, the District Court of the United States in and for the District of Idaho, entered an order dated the 4th day of May, A. D. 1914, and set forth in the Transcript herein referred to on pages 136 and 137, whereby the injunctive relief granted by said Court on the 17th day of April, A. D. 1914, was set aside and all other injunctive relief was denied.

XI.

Your petitioner further represents that the pro-

ceedings of the said Court were erroneous in matter of law in that:

1. The Court erred in vacating and setting aside, by its order or decree of May 4th, 1914, the injunction granted by its former order or decree herein dated April 17th, A. D. 1914, enjoining and restraining T. E. Fitzgerald and W. A. West from proceeding further in the action pending in the District Court of the 5th Judicial District of the State of Idaho in and for Power County, wherein the said T. E. Fitzgerald and W. A. West are plaintiffs, and the said American Falls Canal & Power Company is defendant.

2. The Court erred in denying by its order or decree of May 4th, A. D. 1914, the injunctive relief prayed for by Glenn R. Bothwell, Trustee in bankruptcy of the said American Falls Canal & Power Company by his petition filed herein on the 11th day of April, A. D. 1914, restraining and enjoining T. E. Fitzgerald and W. A. West from proceeding in any State court of the State of Idaho against said Trustee in bankruptcy or said American [157] Falls Canal & Power Company, bankrupt, and from directly or indirectly interfering with the possession or disposition of the assets of the said bankrupt.

3. The Court erred in not granting an unconditional order, permanently enjoining and restraining the said T. E. Fitzgerald and the said W. A. West from proceeding further in the action pending in the District Court of the Fifth Judicial District of the State of Idaho, in and for Power County, and from in any way interfering with the possession or disposi-

tion of the assets of the said bankrupt.

4. The Court erred by including in its said order dated the 17th day of April, A. D. 1914, the further words following, to wit:

“It is further ordered that the said Glenn R. Bothwell, as Trustee in the matter of the Bankruptcy of the American Falls Canal & Power Company, make application at once for authority from the said Bankruptcy Court within the District of Utah to reconstruct and rebuild said lateral No. 33 in such a manner as to convey water from the main canal of the American Falls Canal & Power Company’s system to the lands owned by the said T. E. Fitzgerald and W. A. West for the proper irrigation of said land, pursuant to the contracts attached to complaint in said action and to the petition herein, as Exhibit ‘B,’ the expense of such reconstruction work to be paid as directed by said Bankruptcy Court; and

“It is further ordered that the said Glenn R. Bothwell, as such Trustee, report to this Court his proceedings in the matter on the 5th day of May, A. D. 1914, at the hour of ten o’clock, A. M.”

WHEREFORE, your petitioner, feeling aggrieved because of such orders, asks that the same be revised in matters of law by your Honorable Court as provided in Section 24-b of Bankruptcy Law of 1898, and the rules and practice in such cases provided, and that a stay of execution of the order of May 4, A. D. 1914, hereinbefore recited be ordered by this

Honorable Court, and that the injunction granted by the order of April 17, A. D. 1914, hereinbefore recited, be continued pending the hearing upon this petition.

Dated this 15th day of May, A. D. 1914.

GLENN R. BOTHWELL,
Trustee in Bankruptcy of the American Falls Canal
& Power Company.

By L. R. MARTINEAU, Jr.,
Of Counsel.

Counsel:

CHARLES C. DEY.
A. L. HOPPAUGH.
J. D. SKEEN.
L. R. MARTINEAU, Jr.
ISAAC BLAIR EVANS. [158]

The State of Utah,
County of Salt Lake,
City of Salt Lake,—ss.

I, L. R. Martineau, Jr., being first duly sworn, do hereby make a solemn oath that I am one of counsel for Glenn R. Bothwell, Trustee in bankruptcy of the American Falls Canal & Power Company, petitioner in the foregoing petition, and make this verification for and on his behalf, and I do so for the reason that said petitioner is absent from the county and State, and cannot be reached in time to perfect this appeal, and further for the reason that the facts in said petition set forth are within my personal knowledge. The statements of fact contained in said

petition are true, according to the best of my knowledge, information and belief.

L. R. MARTINEAU, Jr.

Subscribed and sworn to before me, this 2d day of June, A. D. 1914.

My commission expires September 25th, 1915.

[Seal]

WM. J. COWAN,
Notary Public.

[Endorsed]: No. 2431. United States Circuit Court of Appeals for the Ninth Circuit. Glenn R. Bothwell, as Trustee in Bankruptcy of American Falls Canal & Power Company, Bankrupt, Appellant and Petitioner, vs. T. E. Fitzgerald and W. A. West, Appellees and Respondents. In the Matter of American Falls Canal & Power Company, a Corporation, Bankrupt. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, and upon Petition for Revision Under Section 24b of the Bankruptcy Act of July 1, 1898.

Received and filed June 3, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

